

No. 15371

United States
Court of Appeals
for the Ninth Circuit

IRMGARD SANTOS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Petition to Review a Decision of The Tax Court
of the United States.

FILED

FEB 15 1957

PAUL P. O'BRIEN, CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amendment to Answer to Second Amended Petition for Redetermination.....	31
Answer to Second Amended Petition for Rede- termination	29
Certificate of Clerk to Transcript of Record...	69
Decision	65
Findings of Fact and Opinion.....	46
Names and Addresses of Attorneys.....	1
Notice of Deficiency.....	3
Opinion	56
Dissenting	63
Petition for Redetermination, Second Amended	25
Petition for Review.....	66
Reply of Petitioner to Affirmative Matter Set Forth in Respondent's Answer.....	24
Second Amended Petition for Redetermination	25
Statement of Points on Which Petitioner Will Rely (USCA)	201

Stipulation of Facts.....	33
Exhibit 1-A—Stipulation	43
Supplemental Stipulation of Facts.....	45
Transcript of Proceedings and Testimony.....	70
Exhibit for Petitioner:	
2—Statement of Lawrence Santos.....	174
Admitted in Evidence.....	102
Opening Statement for Petitioner.....	72
Opening Statement for Respondent.....	79
Witnesses:	
Cades, Milton	
—direct	147
—cross	162
—redirect	166
Dunn, Herbert C.	
—direct	140
—cross	145
Santos, Irmgard	
—direct	119
—cross	125
—redirect	138
Santos, Lawrence	
—direct	86
—cross	103, 108
—recalled, recross	168

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The Tax Court of the United States

Docket No. 46327

IRMGARD SANTOS,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

AMENDED PETITION

* * * * *

Form 1235-A

Treasury Department, Internal Revenue Service,
P.O. Box 421, Honolulu 9, Hawaii

Office of Internal Revenue Agent in Charge, Honolulu Division, 560 Alexander Young Building.

In Replying Refer to: FC: IMJ-150D

Oct. 15, 1952

Mrs. Irmgard Santos, Transferee
1051 Fort Street, Honolulu, Hawaii.

Dear Madame:

You are advised that the determination of the income tax liability of Lawrence Santos, Transferor, 1051 Fort Street, Honolulu, Hawaii for the taxable years ended December 31, 1943, December 31, 1944, December 31, 1945, and December 31, 1946, discloses a deficiency of \$808,088.93 in income tax and penalties, as shown in the statement attached. \$68,287.90 of the amount of the deficiency

in income tax and penalties, plus interest as provided by law, constituting your liability as transferee of assets of said Lawrence Santos, has been assessed against you under the provisions of the internal revenue laws applicable to jeopardy assessments.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 150 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 150 days you may not exclude any day unless the 150 day is a Saturday, Sunday or legal holiday in the District of Columbia in which event that day is not counted as the 150th day. Otherwise Saturdays, Sundays and legal holidays are to be counted in computing the 150-day period.

Very truly yours,

JOHN B. DUNLAP,
Commissioner,

By H. A. PETERSON,
Internal Revenue Agent in Charge

Enclosure: Statement Form 1276

STATEMENT

Lawrence Santos, Transferor, 1051 Fort Street,
Honolulu, Hawaii

Tax liability for taxable years ended December 31,
1943, December 31, 1944, December 31, 1945,
and December 31, 1946.

Mrs. Irmgard Santos, Transferee,
1051 Fort Street, Honolulu, Hawaii

LIABILITY

Year	Income Tax	Penalties	Total
1943	\$177,847.27	\$197,049.35	\$374,896.62
1944	\$163,935.11	\$ 81,967.56	\$245,902.67
1945	\$105,588.98	\$ 53,007.08	\$158,596.06
1946	\$ 28,693.58	\$	\$ 28,693.58
Totals	<u>\$476,064.94</u>	<u>\$332,023.99</u>	<u>\$808,088.93</u>

Liability limited to value of assets received:

Income Tax\$68,287.90

Inasmuch as the value of assets received by you amounted to \$68,287.90, your liability as transferee is limited to that amount. This liability is applied to the year 1945.

In making the determination of the income tax liability of Lawrence Santos, transferor, careful consideration has been given to the reports of examination dated February 5, 1947 and September 26, 1949; to protests dated January 9, 1950 and October 13, 1951; and to statements made at conferences held on January 10, 1952, and January 30, 1952.

A copy of this letter and statement has been mailed to your representatives, Cameron, Tennent & Dunn, P. O. Box 3556, Honolulu 11, Hawaii, in accordance with the authority contained in the power of attorney executed by you.

The income Tax Liability of Lawrence Santos, transferor, has been computed as follows:

TAXABLE YEAR ENDED DECEMBER 31, 1942

ADJUSTMENTS TO NET INCOME

Net income as disclosed by amended return.....	\$128,684.81
Unallowable deductions and additional income:	
(a) Dividends	\$ 11.97
(b) Interest income	75.84
(c) Rents	225.00
(d) Capital gains	2,068.08
(e) Other income	24,516.39
(f) Interest expense	300.56
	<hr/> 27,197.84
Total.....	\$155,882.65
Nontaxable income and additional deductions:	
(g) Income from business	\$104,044.67
	<hr/>
Net income adjusted	\$ 51,837.98

EXPLANATION OF ADJUSTMENTS

(a) You omitted from your return net dividend income in the amount shown.

(b) You failed to include in your return interest received in the amount shown.

(c) You omitted rental income from the U. S. Army in the amount shown.

(d) You reported a capital gain of \$8,134.78 from the receipt of liquidating dividends on stock of Persan's Ltd., whereas the actual gain was \$10,202.86 computed as follows:

Liquidating dividend received as of 12/31/42.....	\$ 32,826.94
Cost of 1,790 shares	\$ 17,900.00
	<hr/>
Gain	\$ 14,926.94
	<hr/>
Gain on stock held six months or less.....	\$ 5,478.77
Gain on stock held over six months.....	\$9,448.17
50% taxable	\$ 4,724.09
	<hr/>
Total	\$ 10,202.86

(e) Unidentified deposits totalling \$24,516.39, which constitute taxable income were omitted from your return.

(f) You overstated interest paid to Arthur G. Faria in the amount of \$300.56.

(g) You erroneously included income in the amount of \$104,-044.67, which is taxable to Persan's Ltd.

COMPUTATION OF ALTERNATIVE TAX

Net income adjusted	\$51,837.98	
Minus: Excess of net long-term capital gain		
Over net short-term capital loss	\$ 4,724.09	
Ordinary net income	\$47,113.89	
Less: Personal exemption	\$1,200.00	
Credit for dependents	\$ 700.00	\$ 1,900.00
Balance (surtax net income)	\$45,213.89	
Less: Earned income credit—maximum.....	\$ 1,400.00	
Balance subject to normal tax.....	\$43,813.89	
Normal tax at 6%	\$ 2,628.83	
Surtax on \$45,213.89	\$20,224.75	
Partial tax	\$22,853.58	
Plus: 50% of \$4,724.09	\$ 2,362.05	
Alternative tax	\$25,215.63	

COMPUTATION OF TAX

Net income adjusted	\$51,837.98	
Less: Personal exemption	\$1,200.00	
Credit for dependents	\$ 700.00	1,900.00
Surtax net income	\$49,937.98	
Less: Earned income credit.....	1,400.00	
Balance subject to normal tax.....	\$48,537.98	
Normal tax at 6%	\$ 2,912.28	
Surtax on \$49,937.98	23,200.93	
Total normal tax and surtax.....	\$26,113.21	
Correct income tax liability (alternative tax).....	\$25,215.63	

TAXABLE YEAR ENDED DECEMBER 31, 1943

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return	No return filed	
Unallowable deductions and additional income:		
(a) Commissions	\$ 141.86	\$ 141.86
(b) Dividends	1,189.02	1,189.02
(c) Interest	577.69	577.69
(d) Capital gain	8,646.38
(e) Gain from sale of property other than capital assets	123.66	123.66
(f) Rental income	360.00	360.00
(g) Income from business	154,490.31	154,490.00
(h) Other income	191,941.83	191,941.83
Total.....	\$357,470.75	\$348,824.37
Nontaxable income and additional deductions:		
(i) Contributions	\$ 1,194.00
(j) Taxes	4,825.47
Total.....	\$ 6,019.47	None
Net income adjusted	\$351,451.28	\$348,824.37

EXPLANATION OF ADJUSTMENTS

No return was filed for the year ended December 31, 1943. Adjustments shown in this statement are substantially based on your books and records.

(a) Trustee's commissions of \$141.86 were received by you from the Estate of Arthur G. Faria.

(b) You received dividends in the amount shown, which constitute taxable income.

(c) Interest income in the amount of \$577.69 was received by you.

(d) The following capital gain was found to be taxable to you during 1943:

Liquidating dividend from Persan's Ltd.....	\$13,021.40
Cost of 710 shares on 1/12/43.....	4,375.02
Short-term capital gain	\$ 8,646.38

(e) A taxable gain resulted from the sale of property as follows:

Fixtures acquired from Persan's Ltd.:	
Cost 12/31/42	\$ 2,007.22
Sold on 6/15/43 for	2,130.88
<hr/>	
Gain	\$ 123.66
<hr/>	

(f) Rental income of \$360.00 was received from the U. S. Army for a lease on property at Haleiwa, Oahu.

(g) Income from your business, known as Manufacturer's Shoe Store, was found to be \$154,490.31, as compared to income per your books of \$103,233.01, based on the following adjustments:

Net income per books	\$103,233.01
Additions:	
(1) Gross sales	21,583.30
(2) Discount received	606.64
(3) Ending inventory	25,698.50
(4) Advertising expenses	442.45
(5) Traveling expenses	3,496.68
(6) Donations	1,194.00
(7) Dues and subscriptions	555.00
(8) Legal expense	9.00
<hr/>	
Total.....	\$156,818.58
Reductions:	
(9) Bad debts	2,328.27
<hr/>	
Net income adjusted	\$154,490.31

EXPLANATION OF ADJUSTMENTS TO INCOME FROM BUSINESS

(1) Sales listed on your books in a total amount of \$676,-942.93 were understated by \$21,583.30. These sales were credited directly to your Personal Account on your books.

(2) You failed to include in income the amount of \$606.64, which you received from the Commonwealth Shoe and Leather Company, as discount on purchases.

(3) Book inventory of \$150,918.48 adjusted to corrected inventory of \$176,616.98.

(4) Advertising expense is reduced by allowance for advertising received from the Commonwealth Shoe and Leather Company in the amount of \$442.45.

(5) Traveling expense claimed of \$7,285.80 is reduced by \$3,496.68, which could not be substantiated.

(6) Donations are not allowable as a business expense. This deduction is allowed in computing net income in adjustment (i).

(7) Cost of membership in the Outrigger Canoe Club in the amount of \$555.00 is not a business expense.

(8) Legal expense in the amount of \$9.00, was a personal expense.

(9) To allow a deduction for bad debts in the amount shown.

(h) You failed to include in income the following amounts which are held to constitute taxable income to you:

Cash received from James B. Campbell.....	\$ 8,000.00
Sums deposited to various bank, brokerage and personal accounts	183,941.83

(i) Contributions in the amount of \$1,194.00 are deductible in computing net income.

COMPUTATION OF INCOME TAX AND VICTORY TAX

Income tax net income adjusted	\$351,451.28
Less: Personal exemption	\$1,200.00
Credit for dependents	700.00 1,900.00
	<hr/>
Surtax net income	\$349,551.28
Less: Earned income credit—maximum.....	1,400.00
	<hr/>
Balance subject to normal tax.....	\$348,151.28
	<hr/>
Normal Tax at 6% on \$348,151.28.....	\$ 20,889.08
Surtax on \$349,551.28	261,772.05
	<hr/>
Total income tax	\$282,661.13
Victory tax net income adjusted.....	\$348,824.37
Less: Specific exemption	624.00
	<hr/>
Income subject to victory tax.....	\$348,200.37

Victory tax before credit (5% of \$348,200.37)	\$ 17,410.02
Less: Victory tax credit—maximum.....	1,200.00
Net victory tax	\$ 16,210.02
Net income tax and victory tax (1).....	\$298,871.15
Income tax for 1942 (2).....	\$ 25,215.63
Amount of item (1) or (2) whichever is larger.....	\$298,871.15
Forgiveness feature:	
(a) Amount of item (1) or (2) which- ever is smaller	\$25,251.63
(b) Amount forgiven—75% of \$25,215.63	18,911.72
(c) Amount unforgiven	\$ 6,303.91
Correct income tax and victory tax liability.....	\$305,175.06
Income tax and victory tax liability disclosed by return—No return filed	
Income tax and victory tax withheld by employer	None
Income tax paid on 1942 income.....	\$42,487.95
Tax paid on 1943 income on account of declaration of estimated tax.....	\$84,839.84
Total payments.....	\$127,327.79
Deficiency in income tax and victory tax.....	\$177,847.27
25% penalty on \$177,847.27	\$ 44,461.82
50% penalty on \$305,175.06	\$152,587.53

TAXABLE YEAR ENDED DECEMBER 31, 1944

ADJUSTMENTS TO NET INCOME

Net income as disclosed by return.....	\$ 58,840.86
Unallowable deductions and additional income:	\$ 131.92
(a) Interest income	\$ 131.92
(b) Dividends	\$ 1,906.40

(c) Rental income	\$ 360.00
(d) Income from business	\$117,007.69
(e) Capital gains	\$ 123.35
(f) Other income	\$ 60,723.58
	<hr/>
	\$180,252.94
	<hr/>
Net income adjusted	\$293,093.80

EXPLANATION OF ADJUSTMENTS

(a) You failed to include in your gross income interest received in the amount of \$131.92.

(b) You omitted from your gross income dividends from stocks in the amount of \$1,906.40.

(c) You failed to report rental income received from the U. S. Army for a lease on property at Haleiwa, Oahu, in the amount of \$360.00.

(d) Income from your business, known as Manufacturer's Shoe Store, was found to be \$174,191.16 as compared to \$57,183.47 reported in your return. The difference of \$117,007.69 is composed of the following adjustments:

Item	Per Return	Corrected	Net Income Increase
(1) Gross Sales	\$346,296.91	\$351,206.95	\$ 4,910.04
(2) Bonus expense	3,660.27	3,635.83	24.44
(3) Net income from business (7/1/44-12/31/44)	None	112,073.21	\$112,073.21
			<hr/>
Increase in business income.....			\$117,007.69
Net income from business per return.....			57,183.47
			<hr/>
Net income from business corrected.....			\$174,191.16

EXPLANATION OF ADJUSTMENTS TO INCOME
FROM BUSINESS

(1) You failed to report sales in the amount of \$4,910.04. These sales were credited directly to your Personal Account on your books.

(2) An accrued bonus was overstated in the amount of \$24.44.

(3) It has been determined that the Manufacturer's Shoe Store, an alleged partnership between Lawrence Santos and the Hawaiian Trust Company, Trustee for the Lawrence Santos Trust, is not a valid partnership for Federal income tax purposes, and that all income from the Manufacturer's Shoe Store is taxable to you, with the result that all income from the Manufacturer's Shoe Store reported on a fiduciary return filed for the trust is eliminated from such fiduciary return. In view of this determination, the income from the Manufacturer's Shoe Store, which you reported on a fiscal year basis in line with the fiscal year basis used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns.

Accordingly, a portion of the income reported by the alleged partnership, Manufacturer's Shoe Store, for the period 7/1/44 to 2/28/45 is allocated to the calendar year 1944 based on the respective number of months in 1944. The computation of your business income from the alleged partnership, Manufacturer's Shoe Store is as follows:

Ordinary net income reported on partnership return for the period 7/1/44 to 2/28/45.....	\$148,436.35
Add: Capital expenditures erroneously charged to repairs	994.60

Ordinary net income for period 7/1/44 to 2/28/45 revised	\$149,430.95
Pro-rata portion of \$149,430.95 applicable to calendar year ended 12/31/45 (1/1/45 to 2/28/45): 2/8 of \$149,430.95	37,357.74

Pro-rata portion of \$149,430.95 applicable to calendar year ended 12/31/44 (7/1/44 to 12/31/44): 6/8 of \$149,430.95	\$112,073.21
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(e) You failed to report a portion of capital gains from the sale of stocks as follows:

300 shares, Mutual Telephone Co., Selling price, March, 1944	\$4,186.42
Cost 6/11/43	3,747.00
Gain	\$ 439.42
50% taxable	\$ 219.71

65 shares Mutual Telephone Co., Selling price,	
March, 1944	\$894.08
Cost 6/23/43	\$828.10
Gain	\$ 65.98
50% taxable	\$ 32.99
100 shares Hawaiian Electric Co., Selling	
price 3/8/44	\$3,763.80
Cost 6/11/43	\$3,486.00
Gain	\$ 277.80
50% taxable	\$ 138.90
Total capital gains adjusted	\$ 391.60
Capital gains per return.....	268.25
Understatement	\$ 123.35

(f) You failed to include in gross income sums deposited to various banks, brokerage and personal accounts in the amount of \$60,723.58, which are held to constitute taxable income to you.

COMPUTATION OF ALTERNATIVE TAX

Net income adjusted	\$239,093.80
Less: Excess of net long-term capital gain over net	
short term capital loss	391.60
Ordinary net income	\$238,702.20
Less: Surtax exemptions	2,000.00
Balance (surtax net income)	\$236,702.20
Surtax on \$236,702.20	\$190,219.00
Ordinary net income	\$238,702.20
Less: Normal tax exemption	500.00
Balance subject to normal tax.....	\$238,202.20
Normal tax at 3% of \$238,202.20.....	\$ 7,146.07
Partial tax	\$197,365.07
Plus 50% of \$391.60	195.80
Alternative tax	\$197,560.87

COMPUTATION OF TAX

Net income adjusted	\$239,093.80	
Less: Surtax exemption	2,000.00	
		<hr/>
Surtax net income	\$237,093.80	
Surtax on \$237,093.80	\$190,575.36	
Net income adjusted	\$239,093.80	
Less: Normal tax exemption	500.00	
		<hr/>
Balance subject to normal tax.....	\$238,593.80	
Normal tax at 3% of \$238,593.80.....		7,157.81
		<hr/>
Total normal tax and surtax.....	\$197,733.17	
		<hr/>
Correct income tax liability (alternative tax).....	\$197,560.87	
Income tax liability disclosed by return Account		
No. 300454		33,625.76
		<hr/>
Deficiency in income tax.....	\$163,935.11	
50% penalty on \$163,935.11	\$	81,967.56
		<hr/>

TAXABLE YEAR ENDED DECEMBER 31, 1945

ADJUSTMENTS TO NET INCOME

Net income disclosed by the original return.....	\$	91,398.88
Unallowable deductions and additional income:		
(a) Dividends	\$	2,818.32
(b) Interest income		12.75
(c) Rental income		255.00
(d) Income from business		65,962.30
(e) Net capital gain		1,573.12
(f) Other income		45,508.81
		<hr/>
Total.....	\$	207,529.18
Non-taxable income and additional deductions:		
(g) Contributions	\$	545.60
(h) Taxes		34.72
		<hr/>
Net income adjusted	\$	206,948.86

EXPLANATION OF ADJUSTMENTS

(a) You omitted from gross income dividends from stocks which your share under community property law of Hawaii was \$2,818.32.

(b) You omitted from gross income interest received, of which your community share was \$12.75.

(c) You failed to report rent received for property leased to the U. S. Army at Haleiwa, your community^s share of which was \$255.00.

(d) It has been determined that the Manufacturer's Shoe Store, an alleged partnership between Lawrence Santos and Hawaiian Trust Company, a Trustee for the Lawrence Santos, Trust, is not a valid partnership for Federal income tax purposes, and that all income from the Manufacturer's Shoe Store is taxable to you, with the result that all income from the Manufacturer's Shoe Store reported on a fiduciary return filed for the trust is eliminated from such fiduciary return. In view of this determination the income from the Manufacturer's Shoe Store, which you reported on a fiscal year basis in line with the fiscal year used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns.

Accordingly, a portion of the income reported by the alleged partnership Manufacturer's Shoe Store, for the fiscal year 3/1/44 to 2/28/45, and a portion of the income reported by the alleged partnership, Manufacturer's Shoe Store, for the fiscal year 3/1/45 to 2/28/46, is allocated to the calendar year 1945, based on the respective number of months in 1945.

The computation of your business income from the alleged partnership Manufacturer's Shoe Store is as follows:

Ordinary net income reported on partnership return	
for fiscal year 3/1/45 to 2/28/46	\$221,096.12
Add: Rental expenses disallowed as personal	
expenses	\$5,118.71
Less: Rental income eliminated.....	\$1,600.00 3,518.71
<hr/>	
Ordinary net income for fiscal year 3/1/45 to	
2/28/46	\$224,614.83
Pro-rata portion of \$224,614.83 applicable to calendar	
year ended 12/31/46 to 2/28/46: 2/12 of \$224,614.83	37,435.80
<hr/>	

Pro-rata portion of \$224,614.83 applicable to calendar year ended 12/31/45 (3/1/45 to 12/31/45): 10/12 of \$224,614.83\$187,179.03

Pro-rata portion of \$149,430.95, representing revised net income for fiscal period 7/1/44 to 2/28/45 applicable to calendar year ended 12/31/45 (1/1/45 to 2/28/45): 2/8 of \$149,430.95.....\$ 37,357.74

Revised business income from Manufacturer's Shoe Store\$224,536.77

Your share of revised business income under the community property law of Hawaii, which went into effect on June 1, 1945 is computed as follows:

Period	Your share	Your Wife's share
1/1/45 to 2/28/45	\$ 37,357.74	
3/1/45 to 5/31/45 3/10 of \$187,179.03	56,153.71	
6/1/45 to 12/31/45 7/10 of \$187,179.03	65,512.66	\$ 65,512.66
	<hr/>	<hr/>
Totals.....	\$159,024.11	\$ 65,512.66
Reported on your return.....	93,061.81	
	<hr/>	
Business income increased.....	\$ 65,962.30	

(e) You reported a net capital gain of \$51.25 whereas it has been determined that the correct net capital gain was \$1,385.05 as follows:

SHORT-TERM GAINS AND LOSSES

Name	Date Acquired	Date Sold	Sale Price	Cost	Gn/
60 shs. Mutual Telephone Co.	3/24/45	6/13/45	\$ 795.11	\$ 824.40	\$
500 shs. Bishop Nat'l Bank	3/27/45	7/16/45	19,069.00	19,500.00	(4
200 shs. Pac. Gas & Elec. Co.	7/3/45	8/30/45	7,901.34	8,140.65	(2
Total net short-term capital loss.....					\$ 6
Portion of loss attributable to your wife under the community property law of Hawaii 1/2 of \$239.31.....					\$ 1
Revised net short-term capital loss.....					\$ 5

LONG-TERM GAINS AND LOSSES

Name	Date Acquired	Date Sold	Sale Price	Cost	Gn/
135 shs. Mutual Tel. Co.	6/23/43	2/21/45	\$1,838.17	\$1,719.90	\$ 1
100 shs. Mutual Tel. Co.	11/10/43	5/15/45	1,350.50	1,336.50	
47 shs. Mutual Tel. Co.	11/ 1/44	5/15/45	634.74	470.00	1
100 shs. Hawaiian Elect. Co.	6/23/43	6/20/45	4,161.80	3,685.00	4
100 shs. Hawaiian Elect. Co.	7/20/44	6/23/45	4,161.80	3,685.00	4
100 shs. Hawaiian Elect. Co.	10/26/44	7/ 2/45	4,161.80	3,785.00	3
100 shs. Consolidated Am. Co.	6/19/43	6/22/45	4,457.00	2,783.00	1,6
80 shs. Consolidated Am. Co.	7/ 6/44	6/22/45	3,565.60	2,708.00	8
200 shs. Alex. & Baldwin	7/ 3/44	6/16/45	8,923.60	8,674.00	2
Total gain					\$4,4
Net long-term capital gain—50% of \$4,408.61.....					\$2,2
Less: net short-term capital loss.....					\$ 5
Net capital gain adjusted.....					\$1,6
Net capital gain reported.....					\$
Capital gains increased.....					\$1,5

(f) You failed to include in your gross income sums deposited to various bank brokerage and personal accounts which are held to constitute taxable income to you, of which your community share was \$45,508.81.

(g) The deduction for contributions paid is increased as follows:

Contributions reported on partnership return for fiscal period 7/1/44-2/28/45	\$3,279.00
Pro-rata portion of \$3,279.00 applicable to calendar year ended 12/31/44 (7/1/44-12/31/44: 6/8 of \$3,279....	\$2,459.25
Pro-rata portion of \$3,279 applicable to calendar year ended 12/31/45 (1/1/45-2/28/45: 2/8 of \$3,279.00..	\$ 819.75
Contributions reported on partnership return for fiscal year ended 2/28/46	\$3,126.00
Pro-rata portion of \$3,126.00 applicable to calendar year ended 12/31/45 (3/1/45-12/31/45): 10/12 of \$3,126.00	\$2,605.00
Contributions from Manufacturer's Shoe Store.....	\$3,424.75

Your share of contributions under the community property law of Hawaii which went into effect on June 1, 1945 is computed as follows:

Period	Your Share	Your Wife's Share
1/1/45-2/28/45	\$ 819.75	
3/1/45-5/31/45 (3/10 of \$2,605.00	\$ 781.50	
6/1/45-12/31/45 (7/10) of \$2,605.00	\$ 911.75	\$ 911.75
Totals.....	\$2,513.00	\$ 911.75
Contributions deducted on your return	\$1,967.40	
Contributions increased	\$ 545.60	

(h) You are entitled to an additional deduction for taxes in the amount of \$34.72.

COMPUTATION OF ALTERNATIVE TAX

Net income adjusted	\$206,948.86
Less: Excess of net long-term capital gain over net short term capital loss	\$ 1,624.37
Ordinary net income	\$205,324.49
Less: Surtax exemptions	1,500.00
Balance (Surtax net income)	\$205,824.49
Surtax on \$205,824.49.....	\$160,300.29
Ordinary net income (above).....	\$205,324.49
Less: Normal tax exemption	500.00
Balance subject to normal tax.....	\$204,824.49
Normal tax at 3% of \$204,824.49.....	\$ 6,144.73
Partial tax	\$166,445.02
Plus: 50% of \$1,624.37	\$ 812.19
Alternative tax	\$167,257.21

COMPUTATION OF INCOME TAX

Net income adjusted	\$206,948.86
Less: Surtax exemptions	\$ 1,500.00
Surtax net income	\$205,448.86
Surtax on \$205,448.86	\$161,778.46
Net income adjusted	\$206,948.86
Less Normal tax exemption.....	500.00
Balance subject to normal tax.....	\$206,448.86
Normal tax at 3% of \$206,448.86.....	\$ 6,193.47
Total income tax	\$167,971.93
Correct income tax liability (alternative tax).....	\$167,257.21

Income tax liability disclosed on original return, Account No. 301954.....	\$61,243.06	
Additional assessment amended return Account No. Jan. 300501/48.....	425.17	61,668.23
Deficiency in income tax.....		\$105,588.98
50% penalty on \$106,014.15 (167,257.21 less \$61,243.06		\$ 53,007.08

TAXABLE YEAR ENDED DECEMBER 31, 1946

ADJUSTMENTS TO NET INCOME

Net income as disclosed by amended return.....	\$ 73,450.15
Unallowable deductions and additional income:	
(a) Income from business	\$33,199.73
(b) Net capital gain	4,462.94 37,662.67
Total.....	\$111,112.82
Nontaxable income and additional deductions:	
(c) Contributions	78.91
Net income adjusted	\$111,033.91

EXPLANATION OF ADJUSTMENTS

(a) It has been determined that the Manufacturer's Shoe Store an alleged partnership between Lawrence Santos and Hawaiian Trust Company, Trustee for Lawrence Santos Trust, is not a valid partnership for Federal income tax purposes, and that all income from the Manufacturer's Shoe Store is taxable, to you, with the result that all income from the Manufacturer's Shoe Store reported on a fiduciary return for the trust is eliminated from such fiduciary return. In view of this determination the income from the Manufacturer's Shoe Store, which you reported on a fiscal year basis in line with the fiscal year used by the alleged partnership, must be adjusted to the calendar year basis used on your individual income tax returns. Accordingly, a portion of the income reported by the alleged partnership, Manufacturer's Shoe Store, for the fiscal year 3/1/45 to 2/28/46 and a portion of the income reported by the alleged partnership, Manufacturer's Shoe Store, for the fiscal year 3/1/46 to 2/28/47 is allocated to the calendar year 1946, based on the respective number of months in 1946. The computation of your business income from the alleged partnership, Manufacturer's Shoe Store is as follows:

Ordinary net income reported on partnership return for the fiscal year 3/1/46 to 2/28/47.....	\$124,391.93
Add: Closing inventory understated.....	\$74,185.68
Rental expenses disallowed as	
personal expenses	4,968.00 79,153.68
Total.....	\$203,545.61
Less: Rental income eliminated.....	2,400.00
Ordinary net income for fiscal year 3/1/46 to 2/28/47 revised	\$201,145.61
Pro-rata portion of \$201,145.61 applicable to calendar year ended 12/31/47 (1/1/47 to 2/28/47): 2/12 of \$201,145.61	\$ 33,524.27
Pro-rata portion of \$201,145.61 applicable to calendar year ended 12/31/46 (3/1/46 to 12/31/46): 10/12 of \$201,145.61	\$167,621.34
Pro-rata portion of \$224,614.83, representing revised net income for fiscal year 3/1/45 to 2/28/46 applicable to calendar year ended 12/31/46 (1/1/46 to 2/28/46): 2/12 of \$224,614.83	\$ 37,435.80
Revised business income from Manufacturer's Shoe Store	\$205,057.14
Your share of revised business income under the community property law of Hawaii (1/2 of \$205,057.14	\$102,528.57
Income from Manufacturer's Shoe Store reported on your return (1/2 of \$138,657.67)	\$ 69,328.84
Business income increased	\$ 33,199.73

(b) Represents a net long-term capital gain shown in the partnership return of income for the Manufacturer's Shoe Store for the fiscal year 3/1/46 to 2/28/47 which was incurred as of 9/17/46, and which is held to be includible in your 1946 income. Your total net capital gain for the year 1946 thus amounts to \$7,528.42, arrived at as follows:

Net capital gain per amended return.....	\$3,065.48
Additional net capital gain.....	\$4,462.94
Total.....	\$7,528.42

(c) You are entitled to an additional deduction for contributions reported on partnership returns for the Manufacturer's Shoe Store in the amount of \$78.91, computed as follows:

Contributions reported on partnership return for fiscal year 3/1/45-2/28/46	\$ 3,126.00
Pro-rata portion of \$3,126.00 applicable to calendar year ended 12/31/46 (1/1/46 to 2/28/46): 2/12 of \$3,126.00	521.00
Contributions reported on partnership return for fiscal year ended 2/28/47	\$1,814.90
Pro-rata portion of \$1,814.90 applicable to calendar year ended 12/31/46 (3/1/46 to 12/31/46): 10/12 of \$1,814.90	1,512.42
Total contributions from Manufacturer's Shoe Store....	\$ 2,033.42
One-half deductible by your wife, under the community property law of Hawaii	1,016.71
Your share of contributions from Manufacturer's Shoe Store	\$ 1,016.71
Contributions deducted on your return (1½ of \$1,875.60)	937.80
Contributions increased	\$ 78.91

COMPUTATION OF ALTERNATIVE TAX

Net income adjusted	\$111,033.91
Less: Excess of net long-term capital gain over net short-term capital loss	\$ 7,528.42
Ordinary net income	\$103,505.49
Less: Exemptions	1,500.00
Balance	\$102,005.49
Combined tentative normal tax and surtax on \$102,005.49	\$ 69,104.89
Less: 5% of \$69,104.89	3,455.24
Partial tax	\$ 65,649.65
Plus: 50% of \$7,528.42	3,764.21
Alternative tax	\$ 69,413.86

COMPUTATION OF TAX

Net income adjusted	\$111,033.91	
Less: Exemptions	1,500.00	
Balance	\$109,533.91	
Combined tentative normal tax and surtax on \$109,533.91	\$ 75,805.18	
Less: 5% of \$75,805.18	3,790.26	
Combined normal tax and surtax.....	\$ 72,014.92	
Correct income tax liability (alternative tax).....	\$ 69,413.86	
Income tax liability disclosed by original return, Account No. July 320011/47....	\$39,845.28	
Additional assessment amended return, Account No. Jan. 300800/48.....	875.00	40,720.28
Deficiency in income tax.....	\$ 28,693.58	

[Endorsed]: T.C.U.S. Filed Feb. 5, 1953.

[Title of Tax Court and Cause.]

PETITIONER'S REPLY TO AFFIRMATIVE
MATTER SET FORTH IN RESPOND-
ENT'S ANSWER

Comes now Irmgard Santos, the petitioner above named, by her attorney R. A. Rogers, and by way of answer to the affirmative matter contained in respondent's answer, admits, denies and alleges as follows, to-wit:

I.

Denies for lack of information the allegations contained in Subdivision "A" of Paragraph X of respondent's answer.

II.

Denies each and every, all and singular, the allegations contained in Subdivisions "B" and "C" of Paragraph X of respondent's answer.

Wherefore, Petitioner prays that respondent take nothing by his answer on file herein, and that the above entitled Court determine that there is no deficiency in taxes, penalties or interest due from petitioner and that petitioner is not a transferee either in law or in equity of Lawrence Santos in the amount of \$68,287.90, or in any other sum or at all and for such other and further relief as to the Court may seem meet and proper in the premises.

Dated: San Francisco, March 31, 1953.

/s/ R. A. ROGERS,

Counsel for Petitioner

Duly Verified.

[Endorsed]: T.C.U.S. Filed Apr. 6, 1953.

[Title of Tax Court and Cause.]

SECOND AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols FC:IMJ—150D) dated October 15, 1952, and as a basis for her proceeding alleges as follows:

1. The petitioner is an individual with residence

at 3639 Diamond Head Road, Honolulu, Hawaii. The returns for the period here involved were filed by the petitioner's husband, Lawrence Santos, with the Collector of Internal Revenue for the District of Hawaii.

2. A notice of deficiency (a copy of which is attached to the Amended Petition filed herein on February 5, 1953, marked Exhibit A) was mailed to the petitioner at her husband's business address, 1051 Fort Street, Honolulu, on October 15, 1952. The petitioner's husband forwarded said notice to the petitioner (who was then living in California) on or about November 25, 1952 and it was received by the petitioner on November 26, 1952.

3. The deficiency as determined by the Commissioner is in income taxes (and penalties) of the petitioner's husband, Lawrence Santos, for the calendar years 1943, 1944, 1945 and 1946, a deficiency in the amount of \$68,287.90, plus interest, having been assessed against the petitioner as a transferee of assets of Lawrence Santos. The entire amount of the deficiency assessed is in controversy.

4. The determination of tax as set forth in said notice of deficiency is based upon the following errors:

(a) The Commissioner was in error in determining that the petitioner was liable as a transferee of assets of Lawrence Santos in the amount of \$68,287.90 because at the time the alleged transfers of assets took place Lawrence Santos was not insolvent.

(b) The Commissioner was in error in determin-

ing that the petitioner was liable as a transferee of assets of Lawrence Santos in the amount of \$68,-287.90 because there was no transfer of assets of Lawrence Santos to the petitioner. The alleged transfers to the petitioner of assets without consideration were in fact distributions to the petitioner of property which was already her own.

(c) The Commissioner is estopped from proceeding against the petitioner as transferee because of representations made by officials and representatives of the Bureau of Internal Revenue and because of the Commissioner's agreement to apply the proceeds of the assets alleged to have been transferred to the petitioner's individual income tax liability.

5. The facts upon which the petitioner relies as a basis for this proceeding are as follows:

(a) At the time of the alleged transfers of assets from Lawrence Santos to the petitioner in 1948, 1949 and 1950 the assets of Lawrence Santos exceeded his liabilities, other than additional federal income taxes not then known or assessed. The additional federal income taxes of Lawrence Santos for the years 1943, 1944, 1945 and 1946 were not known or assessed until December 26, 1951.

(b) In 1948, 1949 and 1950 Lawrence Santos purchaser cashiers' checks in the name of Lawrence Santos and/or Irmgard Santos in an aggregate principal amount of \$82,272.67 and delivered said checks to petitioner who retained them until 1950 when she delivered them to Lawrence

Santos to be used to purchase government bonds for her. Lawrence Santos used said checks to purchase \$80,000 principal amount of U. S. government bearer bonds which he immediately delivered to the petitioner who retained them until the time she used them to pay her taxes. Lawrence Santos delivered said cashiers' checks to the petitioner to satisfy her demands against him for her share in the shoe business to which they both contributed capital and services, for her share of community income during the period of community property in Hawaii (June 1, 1945 to June 30, 1949) and for her share in the proceeds of the sale of a home in 1950 owned by them as joint-tenants. The delivery to the petitioner of said cashiers' checks (and subsequently the government bonds purchased with said checks) constituted a distribution to her of her own property and not a transfer to her of assets of Lawrence Santos.

(c) The petitioner is informed and believes and upon such information and belief alleges that officials and representatives of the Bureau of Internal Revenue assured Lawrence Santos that if the \$70,000 in government bonds in the possession of the petitioner was used by her to pay her individual income tax liability for the years 1943-1947, all of her tax liabilities would be discharged in full and that if her taxes were in fact overpaid she would be entitled to a refund. Lawrence Santos persuaded petitioner to sell said bonds and apply the proceeds (\$68,287.90) to payment of individual income taxes asserted against her for 1943-1947 on the basis of said assurances. Said amount was paid to the Col-

lector of Internal Revenue in April, 1952 and a certificate of discharge of tax liens against the petitioner for the years 1943-1947 was issued on April 4, 1952. Notwithstanding the foregoing, on October 15, 1952 a notice of deficiency in the amount of \$68,287.90, based on petitioner's asserted liability as a transferee of assets of Lawrence Santos, was issued. The subsequent and final determination of the petitioner's individual income tax liabilities for 1943-1947 resulted in a determination of overpayments in excess of \$60,000.

Wherefore, the petitioner prays that this Court may hear the proceeding and determine that no deficiency is due from the petitioner as transferee of assets of Lawrence Santos.

/s/ M. M. GOODSILL,

Counsel for Petitioner

Duly Verified.

[Endorsed]: T.C.U.S. Filed July 23, 1954.

[Title of Tax Court and Cause.]

ANSWER TO SECOND AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue Service, and for answer to the second amended petition filed by the above petitioner, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1 of the second amended petition.

2. Admits the allegations contained in the first sentence of paragraph 2 of the second amended petition, but denies the remaining allegations contained in paragraph 2 of the second amended petition for lack of sufficient information.

3. Admits the allegations contained in paragraph 3 of the second amended petition.

4. (a), (b) and (c). Denies the allegations of error contained in subparagraphs (a), (b) and (c) of paragraph 4 of the second amended petition.

5. (a). Denies the allegations contained in subparagraph (a) of paragraph 5 of the second amended petition.

(b). Admit that in 1948, 1949 and 1950 Lawrence Santos purchased cashier's checks in the name of Lawrence Santos and/or Irmgard Santos in aggregate principal amount of \$82,272.67; that the said Lawrence Santos in 1950 purchased U. S. Government Bearer Bonds in the principal amount of \$80,000 by use of the aforesaid cashier's checks; but denies the remaining allegations contained in subparagraph (b) of paragraph 5 of the second amended petition.

(c) Admits that said bonds were sold by Lawrence Santos in 1952 and the proceeds from the sale of said bonds, namely, \$68,287.90, was given to petitioner for the purpose of her satisfying her asserted individual Federal income tax liabilities as then had been asserted against her for the taxable years 1943 to 1947, inclusive; admits that on Octo-

ber 15, 1952 a notice of deficiency in the amount of \$68,287.90 was issued to petitioner as transferee of assets of Lawrence Santos; admits that the subsequent and final determination of petitioner's individual income tax liabilities for 1943 to 1947 resulted in a determination of overpayments in said years in excess of \$60,000; but denies the remaining allegations contained in subparagraph (c) of paragraph 5 of the second amended petition.

Wherefore, it is prayed that the petitioner's appeal be denied and the determinations of the Commissioner in all respects be approved.

/s/ DANIEL A. TAYLOR,
Chief Counsel, Internal Revenue
Service

Of Counsel:

Melvin L. Sears,
Regional Counsel
R. E. Maiden, Jr.,
Special Assistant to the Regional Counsel,
Internal Revenue Service

[Endorsed]: T.C.U.S. Filed July 23, 1954.

[Title of Tax Court and Cause.]

AMENDMENT TO ANSWER TO SECOND AMENDED PETITION

Comes now the respondent, by his attorney, Daniel A. Taylor, Chief Counsel, Internal Revenue

Service, and amends the answer to second amended petition filed with the Court on July 23, 1954, as follows, to wit:

Immediately after subparagraph (c) of paragraph 5 on page 2 and immediately before the wherefore clause on page 3, the following additional allegations are made:

6. Further answering, and for affirmative allegations in connection with the liability of the petitioner as transferee of the assets of Lawrence Santos, respondent alleges as follows:

(a) There have been assessed against Lawrence Santos deficiencies in Federal income taxes and penalties for the years 1943 to 1946, inclusive, aggregating \$808,088.93, as is more fully set out in the notice of deficiency, a copy of which is attached to the amended petition, which taxes and penalties together with interest thereon as provided by law have not been paid and are still due and unpaid.

(b) Subsequent to the due date of said taxes, Lawrence Santos transferred, conveyed, and delivered to the petitioner United States government bonds having a cash value of not less than \$68,287.90, which transfer left Lawrence Santos insolvent and without money or assets to pay the aforesaid deficiencies.

(c) The petitioner received said United States government bonds without consideration, and by reason of the receipt of said bonds this petitioner became a transferee of said Lawrence Santos within the meaning of the applicable statutes, and as such,

is liable for the payment of said deficiencies to the extent of the value of the assets so received by her.

/s/ DANIEL A. TAYLOR,

Chief Counsel, Internal Revenue
Service

Of Counsel:

Melvin L. Sears,

Regional Counsel

E. C. Crouter,

Assistant Regional Counsel

R. E. Maiden, Jr.,

Special Assistant to the Regional Counsel,
Internal Revenue Service

[Endorsed]: T.C.U.S. Filed Oct. 15, 1954.

[Title of Board and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed between the Commissioner of Internal Revenue and the above-entitled petitioner, by their respective counsel of record, that the following facts shall be taken as true, provided however, that this stipulation does not waive the right of either party to introduce other evidence not at variance with the facts herein stipulated, or to object to the introduction in evidence of any such facts on the grounds of immateriality or irrelevancy.

1. Petitioner is an individual whose mailing address is now 3639 Diamond Head Road, Honolulu,

Territory of Hawaii. Petitioner is married to Lawrence Santos of Honolulu. They were married in 1928.

2. On October 15, 1952 the Commissioner of Internal Revenue mailed petitioner as transferee of assets of Lawrence Santos a notice of deficiency in the amount of \$68,287.90, said notice of deficiency being in the form attached as an exhibit to the Amended Petition filed in this case on February 5, 1953.

3. In 1937 Persans, Limited, a Hawaii corporation, was organized to engage in the retail shoe business in Honolulu. Persans, Limited was capitalized at \$20,000 and stock of the par value of \$5,000 was issued to and in the name of Lawrence Santos and dividends paid thereon were paid to him individually; the balance of the outstanding and issued shares of stock of the par value of \$15,000 was issued to other stockholders. The \$5,000 contributed in payment for the \$5,000 par value of stock issued to Lawrence Santos, as aforesaid, was obtained by loan from the uncle of Lawrence Santos, obtained on a promissory note signed by Lawrence Santos and petitioner and secured by a mortgage on home located on Oahu Avenue, Manoa Valley, Honolulu, owned by Lawrence Santos and petitioner as joint tenants. The mortgage was signed by both Lawrence Santos and petitioner.

4. Lawrence Santos received a salary from Persans, Limited and worked full time for the company. Petitioner worked for the company on Saturdays. Lawrence Santos gradually acquired

through purchase or inheritance all of the stock of Persans, Limited.

5. In May, 1942, Lawrence Santos purchased Manufacturers' Shoe Store in Honolulu for \$50,000. Lawrence Santos personally had no funds to make this purchase and it was financed as follows: Persans, Limited borrowed \$50,000 from the Bishop National Bank, pledging its assets as security. Persans, Limited then loaned \$50,000 to Lawrence Santos who paid it to seller of Manufacturers' Shoe Store. In December, 1942 Lawrence Santos liquidated Persans, Limited and the proceeds of the liquidation (\$43,750.35) were paid to Lawrence Santos, doing business as Manufacturers' Shoe Store as an individual proprietorship until July 1, 1944.

6. On July 1, 1944 Lawrence Santos created an irrevocable trust by transfer to Hawaiian Trust Company, Limited of the sum of \$70,000, the beneficiaries of the trust being the two children of Lawrence Santos and petitioner. A limited partnership was organized in accordance with the laws of the Territory of Hawaii by and between Lawrence Santos, as general partner, and Hawaiian Trust Company, Limited, Trustee, under Deed of Trust dated July 1, 1944, as limited partner, for the purpose of acquiring at the close of business on June 30, 1944, all the assets of, and to carry on the business heretofore carried on and conducted by Lawrence Santos under the name of Manufacturers' Shoe Store, in accordance with a limited partnership agreement between Lawrence Santos and Hawaiian Trust Company, Limited, dated as of July 1, 1944.

Lawrence Santos transferred to said limited partnership all of his right, title and interest in the assets of the business formerly carried on by him under the name of Manufacturers' Shoe Store, having a net book value of \$105,000, in exchange for a 60 per cent interest in said limited partnership, and Hawaiian Trust Company, Limited, as Trustee, at the same time contributed the sum of \$70,000 and acquired ownership of a 40 per cent interest in said partnership. At the time of the creation of the limited partnership no share therein was given to petitioner in recognition of any interest she might have or claim in the business formerly carried on as Manufacturers' Shoe Store or in the business of Persans, Limited.

7. Effective June 1, 1945 the Territory of Hawaii adopted a Community Property Law providing in part that all property, including earnings of the husband and earnings of the wife and including rents, issues, income and other profits of the separate property of the husband and rents, issues, income and other profits of the separate property of the wife, acquired by the husband or by the wife after marriage or after effective date of the law, whichever is the later, shall be the community property of the husband and wife. Chapter 301A, Series D-201, Session Laws of Hawaii 1945. This Community Property Law was repealed effective June 30, 1949. Series D-296, Session Laws of Hawaii 1949.

8. On March 1, 1947 Manufacturers' Shoe Company, Limited was incorporated to take over the

assets and liabilities of the limited partnership. The corporation was capitalized at \$350,000, Lawrence Santos receiving capital stock of the par value of \$210,000 and Hawaiian Trust Company, Limited, as Trustee, receiving capital stock of the par value of \$140,000.

9. In the early part of 1948 Lawrence Santos requested Cameron and Johnstone, auditors for the corporation and for the limited partnership, to determine what portion of the capital stock of \$210,000 issued to him at incorporation of Manufacturers' Shoe Company, Limited, represented earnings since June 1, 1945, i.e. that portion which represented community property. Cameron and Johnstone made an examination, and on April 5, 1948 advised Lawrence Santos that \$105,000 out of the \$210,000 was community property and that his wife would be entitled to receive stock of the par value of \$52,500 in recognition of her community property interest in the earnings of the business from June 1, 1945, to February 28, 1947. On or about April 5, 1948, Lawrence Santos then transferred to petitioner, as of March 1, 1947, capital stock of Manufacturers' Shoe Company of the par value of \$52,500 out of his share of the capital stock of the Company, leaving him stock of the par value of \$157,500.

10. From August, 1951 to June, 1952 petitioner lived on the West Coast. She returned to Honolulu in June, 1952 and stayed until August, 1952 when she finally moved to California. In October, 1952 petitioner filed an action in a California court for separate maintenance. Personal service, however,

was never obtained on Lawrence Santos in said action. In December, 1953 petitioner returned to Honolulu where she is now living.

11. Petitioner's share of the community income of herself and Lawrence Santos for the period from June 1, 1945 (commencement of community property) to February 28, 1947 (the date of the organization of the corporation) was as follows:

June 1, 1945 - December 31, 1945.....	\$ 15,621.92
January 1, 1946 - December 31, 1946.....	54,400.31
January 1, 1947 - February 28, 1947.....	41,564.78
<hr/>	
Total.....	\$111,587.01

Petitioner's share of the community income of herself and husband for the period from March 1, 1947 to July 1, 1949 (the end of community property) was as follows:

March 1, 1947 - December 31, 1947.....	\$ 11,610.60
January 1, 1948 - December 31, 1948.....	21,063.38
January 1, 1949 - June 30, 1949	10,715.52
<hr/>	
Total.....	\$ 43,389.50

12. Petitioner's Federal income tax liability on her community income as aforesaid for the taxable years 1945, 1946, 1947, 1948, and 1949 was \$5,240.96, \$28,257.97, \$27,384.49, \$6,165.16 and \$3,241.33, respectively.

13. After U. S. Federal taxes petitioner's aggregate community income for the aforesaid taxable years (during the community property period) was \$84,686.60.

14. On April 15, 1948 Lawrence Santos purchased from Bishop National Bank a cashier's check

in the amount of \$14,000 made payable to Lawrence Santos and/or Irmgard Santos. On April 16, 1948 Lawrence Santos purchased a cashier's check from the Bishop National Bank in the amount of \$12,-328.80 made payable to Lawrence Santos and/or Irmgard Santos. On November 16, 1948 Lawrence Santos purchased a cashier's check from Bishop National Bank in the amount of \$15,000 made payable to Lawrence Santos and/or Irmgard Santos. On May 13, 1949 Lawrence Santos purchased from Bishop National Bank a cashier's check in the amount of \$10,718.77 made payable to Lawrence Santos and/or Irmgard Santos. On May 16, 1949, Lawrence Santos purchased from Bishop National Bank a cashier's check in the amount of \$13,547.14 made payable to Lawrence Santos and/or Irmgard Santos. On August 8, 1950 Lawrence Santos purchased from Bishop National Bank a cashier's check in the amount of \$10,448.84 made payable to Lawrence Santos and/or Irmgard Santos. On September 18, 1950 Lawrence Santos purchased from Bishop National Bank a cashier's check in the amount of \$6,229.12 made payable to Lawrence Santos and/or Irmgard Santos. Lawrence Santos went to California in November of 1950. On November 22, 1950 Lawrence Santos took the aforesaid cashier's checks to Schwabacher & Co., San Francisco, and thereupon purchased \$80,000 principal amount of U. S. Treasury 2½% Bearer Bonds for a total price of \$81,674.32. Lawrence Santos alone endorsed the cashier's checks. Lawrence Santos took delivery of the bonds on Novem-

ber 27, 1950 from Schwabacher & Co. and gave his receipt therefor.

15. The aforesaid corporation, Manufacturers' Shoe Company, Limited, from the time of its incorporation on March 1, 1947 through the taxable year 1952, declared and paid dividends in the fiscal years ended February 28, 1949 and February 28, 1951 in the respective amounts of \$8,750 each year. Petitioner's pro rata share of the 1949 dividend from her aforesaid stockholdings in said corporation is included in the amount of her community income set forth in paragraph 11 hereinabove.

16. The total value of the assets of Lawrence Santos as of December 31 of each of the following years was in the amount for each of said years as follows:

December 31, 1947.....	\$214,640.60
December 31, 1948.....	205,813.93
December 31, 1949.....	215,372.66
December 31, 1950.....	236,843.73
December 31, 1951.....	237,302.02
December 31, 1952.....	213,452.24

On December 26, 1951 the first assessment was made against Lawrence Santos with respect to Federal income tax deficiencies for the years 1943, 1944, 1945 and 1946. An additional assessment was made on February 27, 1952. The unpaid liability of Lawrence Santos for Federal income taxes and penalties, incurred but not assessed, at December 31, 1948, December 31, 1949 and December 31, 1950 was \$415,427.73, plus interest. The tax liability at December 31, 1951 and December 31, 1952 was the

same, namely, \$415,427.73, plus interest. In addition to the aforesaid Federal tax liabilities Lawrence Santos as of December 31 of each of the years 1948, 1949, 1950, 1951 and 1952 was indebted to the Manufacturers' Shoe Store in the amounts of \$91,-651.69, \$105,856.50, \$120,404.73, \$127,308.70 and \$127,511.70, respectively.

17. On March 27, 1952 petitioner took the aforesaid bonds, in the face amount of \$70,000 to Berl & Company, San Francisco and sold them for the total amount of \$68,287.90 for which checks in said amount of \$68,287.90 were made payable to petitioner. Petitioner endorsed these checks in favor of Smith, Wild, Beebe and Cades of Honolulu. The checks were deposited by Smith, Wild, Beebe and Cades in their trust account and that firm then made a check payable to the Collector of Internal Revenue in the same amount (\$68,287.90) in payment of the individual taxes asserted against petitioner for the taxable years 1943 to 1947, inclusive, in the jeopardy assessments which had been levied against her. On April 4, 1952 a Certificate of Discharge of Tax Liens against petitioner for the aforesaid years 1943 to 1947, inclusive, was issued by the Collector of Internal Revenue and duly recorded.

18. In the subsequent and final determination of petitioner's individual income tax liabilities for the taxable years 1943 to 1947, inclusive, which were at issue before The Tax Court of the United States in Docket No. 42682, it was determined that petitioner had overpaid her income tax liabilities for

the taxable years 1945 and 1946 in the amounts of \$24,768.51 and \$38,237.18, respectively.

19. A copy of the stipulation of settlement showing said overpayments due to petitioner which was filed with The Tax Court of the United States in Docket No. 42682 at the time of the call of the Court's calendar in Honolulu on July 15, 1954 is attached hereto as Exhibit 1-A to this stipulation of facts.

20. On April 4, 1950, the house at Halelea Place, Manoa Valley, Honolulu, owned by petitioner and Lawrence Santos as joint tenants, was sold for \$21,000. After deduction of \$1,085.10 expenses, net proceeds were \$19,914.90. The Halelea Place house was purchased by the petitioner and her husband on September 23, 1941 for \$14,250, utilizing proceeds from the sale of the house on Oahu Avenue which had been owned by them as joint tenants and which had been sold on March 12, 1941. The Oahu Avenue house was purchased on July 26, 1937, utilizing proceeds from the sale of a house on Liliha Street, Honolulu, owned by the petitioner and her husband as joint tenants.

/s/ M. M. GOODSILL

Counsel for Petitioner

/s/ DANIEL A. TAYLOR

Chief Counsel, Internal Revenue
Service, Counsel for Respondent

[Endorsed]: T. C. U. S. Filed July 23, 1954.

EXHIBIT No. 1-A

The Tax Court of the United States

Docket No. 42682

Irmgard Santos, Petitioner, vs. Commissioner of
Internal Revenue, Respondent.

STIPULATION

It is hereby stipulated that there are deficiencies in Federal income tax and penalty due from petitioner for the taxable year 1943 in the amounts of \$134.63 and \$33.66, respectively, without considering the jeopardy assessment made before the issuance of the deficiency notice.

It is hereby stipulated that the following statements show the petitioner's income tax liabilities for the taxable years 1945 and 1946:

1945

Assessed and paid	\$30,009.47
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Payments:

December 30, 1947.....	\$ 109.83
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January 8, 1952	140.63
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April 3, 1952	10,264.09
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April 3, 1952	19,130.81
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Payment transferred from year 1943.....	235.91
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Estimated tax payment	128.20
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(Share of Lawrence Santos allocated to petitioner)	_____
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Total paid	\$ 30,009.47
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Liability	5,240.96
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Overpayment (Sec. 322(d), I.R.C.)	\$24,768.51
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Original return filed March 15, 1946.

Original Consent Form 872 executed on February 10, 1949.

Renewal Consents extending the Statute to June 30, 1952 executed on the following dates: June 20, 1950, March 6, 1951.

Deficiency notice dated February 20, 1952.

Claim for refund filed April 2, 1954.

1946

Assessed and paid:\$66,495.15

Payments:

September 26, 1947\$ 2,500.00

October 31, 1947 2,500.00

November 28, 1947 2,500.00

December 23, 1947 2,500.00

January 27, 1948 2,500.00

February 27, 1948 2,500.00

April 2, 1948 2,713.49

April 3, 1952 26,566.61

Petitioner's one-half of joint payments

on estimated tax 22,215.05

Total paid\$66,495.15

Liability 28,257.97

Overpayment (Sec. 322(d), I.R.C.)\$38,237.18

Original return filed June 16, 1947.

Original Consent Form 872 executed on January 4, 1950.

Renewal Consent extending the Statute to June 30, 1952, executed on December 29, 1950.

Deficiency notice dated February 20, 1952.

Claim for refund filed April 2, 1954.

/s/ Milton Cades,

Counsel for Petitioner

/s/ Daniel A. Taylor—R.P.H.

Chief Counsel, Internal Revenue
Service

Counsel for Respondent

REM/jus 6/25/54

[Endorsed]: T.C.U.S. Filed July 15, 1954.

[Title of Tax Court and Cause.]

SUPPLEMENTAL STIPULATION OF FACTS

It is hereby stipulated and agreed between the Commissioner of Internal Revenue and the above-entitled petitioner, by their respective counsel of record, that the following fact shall be taken as true.

The unpaid liability of Lawrence Santos for Federal income taxes and penalties, incurred but not assessed, at December 31, 1947 was \$415,427.73, plus interest.

/s/ M. M. GOODSILL

Counsel for Petitioner

/s/ DANIEL A. TAYLOR

Chief Counsel, Internal Revenue

Service, Counsel for Respondent

[Endorsed]: T. C. U. S. Filed Nov. 2, 1954.

26 T. C. No. 71

Tax Court of the United States

Docket No. 46327

IRMGARD SANTOS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Filed June 18, 1956.

FINDINGS OF FACT AND OPINION

Respondent determined liability against petitioner, as transferee, for the income tax liability of her husband, Lawrence Santos, for the years 1943 to 1946, inclusive. Held:

1. Petitioner is liable as transferee to the extent of \$68,287.90 representing the value of part of the assets received by her from Lawrence Santos, transferor.

2. Petitioner has failed to show any basis for the application of the doctrine of estoppel.

M. M. Goodsill, Esq., for the petitioner.

R. E. Maiden, Jr., Esq., and E. A. Tonjes, Esq., for the respondent.

This proceeding involves the transferee liability of petitioner for the income tax liability of Lawrence Santos, transferor, for the taxable years 1943 to 1946, inclusive, to the extent of \$68,287.90, representing the value of part of the assets received by her from the transferor.

The issues are (1) whether petitioner is liable to the extent of \$68,287.90 for income taxes for the years 1943 to 1946, inclusive, as transferee of assets of Lawrence Santos, her husband, and (2) whether the respondent is estopped from proceeding against the petitioner as transferee.

Findings of Fact

The stipulated facts are found accordingly.

Petitioner is a resident of the City of Honolulu, Territory of Hawaii. In 1928 petitioner was married to Lawrence Santos, of Honolulu.

On October 15, 1952, the Commissioner of Internal Revenue mailed petitioner, as transferee of assets of Lawrence Santos, a notice of deficiency in the amount of \$68,287.90.

At the time the petitioner was married to Lawrence Santos they were both employed. Petitioner was receiving a salary of \$125 a month, which was increased later to \$165 a month. Lawrence Santos was receiving a salary of \$175 a month, which was increased to \$200 a month. At the time Lawrence started Persans, Limited, he had no assets other than the salaries of himself and wife.

Lawrence worked full time for Persan's Limited, and received a salary. Petitioner worked at Persans, Limited, on Saturdays and other days after she had completed her regular job. She was not paid a salary for working at Persan's, Limited, and was never paid anything by her husband for whatever contributions to the capital of the business, if any,

which she may have made from her compensation received from her regular employment. Lawrence gradually acquired, through purchase or inheritance, all of the stock of Persans, Limited.

In 1937 Persans, Limited, a Hawaii corporation, was organized to engage in the retail shoe business in Honolulu. Persans, Limited, was capitalized at \$20,000 and stock of the par value of \$5,000 was issued to and in the name of Lawrence Santos, and dividends paid thereon were paid to him individually; the balance of the outstanding and issued shares of stock of the par value of \$15,000 was issued to other stockholders. The \$5,000 contributed in payment for the \$5,000 par value of stock issued to Lawrence Santos was obtained by loan from the uncle of Lawrence Santos on a promissory note signed by Lawrence Santos and petitioner, and secured by a mortgage on a house located on Oahu Avenue, Manoa Valley, Honolulu, owned by Lawrence Santos and petitioner as join tenants. The mortgage was signed by both Lawrence Santos and petitioner.

The \$5,000 which Lawrence borrowed from his uncle for an investment in Persans, Limited, was repaid out of his joint checking account.

In May, 1942 Lawrence Santos purchased Manufacturers' Shoe Store in Honolulu for \$50,000. He personally had no funds to make this purchase and it was financed as follows: Persans, Limited, borrow \$50,000 from the Bishop National Bank, pledging its assets as security. Persans, Limited, then

loaned \$50,000 to Lawrence Santos who paid it to the seller of Manufacturers' Shoe Store. In December, 1942 Lawrence Santos liquidated Persans, Limited, and the proceeds of the liquidation (\$43,750.35) were paid to Lawrence Santos, doing business as Manufacturers' Shoe Store as an individual proprietorship until July 1, 1944.

On July 1, 1944, Lawrence Santos created an irrevocable trust by transfer to Hawaiian Trust Company, Limited, of the sum of \$70,000, the beneficiaries of the trust being the two children of Lawrence Santos and petitioner. A limited partnership was organized in accordance with the laws of the Territory of Hawaii by and between Lawrence Santos, as general partner, and Hawaiian Trust Company, Limited, Trustee, under Deed of Trust dated July 1, 1944, as limited partner, for the purpose of acquiring at the close of business on June 30, 1944, all the assets of, and to carry on the business heretofore carried on and conducted by, Lawrence Santos under the name of Manufacturers' Shoe Store, in accordance with a limited partnership agreement between Lawrence Santos and Hawaiian Trust Company, Limited, dated as of July 1, 1944. Lawrence Santos transferred to such limited partnership all of his right, title, and interest in the assets of the business formerly carried on by him under the name of Manufacturers' Shoe Store, having a net book value of \$105,000, in exchange for a 60 per cent interest in such limited partnership, and Hawaiian Trust Company, Limited, as Trustee, at the same time contributed the sum of

\$70,000 and acquired ownership of a 40 per cent interest in such partnership. At the time of the creation of the limited partnership no share therein was given to petitioner in recognition of any interest she might have or claim in the business formerly carried on as Manufacturers' Shoe Store or in the business of Persans, Limited.

Effective June 1, 1945, the Territory of Hawaii adopted a community property law providing in part that all property, including earnings of the husband and earnings of the wife, and rents, issues, income, and other profits of the separate property of the husband, and rents, issues, income, and other profits of the separate property of the wife, acquired by the husband or by the wife after marriage or after effective date of the law, whichever is the later, shall be the community property of the husband and wife. Ch. 301A, sr. D-201, Session Laws of Hawaii 1945. This community property law was repealed effective June 30, 1949. Ch. 301A, sr. D-296, Session Laws of Hawaii 1949.

On March 1, 1947, Manufacturers' Shoe Company, Limited, was incorporated to take over the assets and liabilities of the limited partnership. The corporation was capitalized at \$350,000, Lawrence Santos receiving capital stock of the par value of \$210,000, and Hawaiian Trust Company, Limited, as Trustee, receiving capital stock of the par value of \$140,000.

In the early part of 1948 Lawrence Santos requested Cameron and Johnstone, auditors for the corporation and for the limited partnership, to de-

termine what portion of the capital stock of \$210,000 issued to him at incorporation of Manufacturers' Shoe Company, Limited, represented earnings since June 1, 1945, i.e., that portion which represented community property. Cameron and Johnstone made an examination, and on April 5, 1948, advised Lawrence Santos that \$105,000 out of the \$210,000 was community property and that his wife would be entitled to receive stock of the par value of \$52,500 in recognition of her community property interest in the earnings of the business from June 1, 1945, to February 28, 1947. On or about April 5, 1948, Lawrence Santos then transferred to petitioner, as of March 1, 1947, capital stock of Manufacturers' Shoe Company of the par value of \$52,500 out of his share of the capital stock of the company, leaving him stock of the par value of \$157,500.

From August, 1951 to June, 1952 petitioner lived on the West Coast. She returned to Honolulu in June, 1952 and stayed until August, 1952 when she finally moved to California. In October, 1952 petitioner filed an action in a California court for separate maintenance. Personal service, however, was never obtained on Lawrence Santos in such action. In December, 1953 petitioner returned to Honolulu, where she is now living.

Petitioner's share of the community income of herself and Lawrence Santos for the period from June 1, 1945 (commencement of community property), to February 28, 1947 (the date of the organization of the corporation), was as follows:

June 1, 1945 - December 31, 1945.....	\$ 15,621.92
January 1, 1946 - December 31, 1946	54,400.31
January 1, 1947 - February 28, 1947.....	41,564.78

Total\$111,587.01

Petitioner's share of the community income of herself and husband for the period from March 1, 1947, to July 1, 1949 (the end of community property), was as follows:

March 1, 1947 - December 31, 1947.....	\$ 11,610.60
January 1, 1948 - December 31, 1948	21,063.38
January 1, 1949 - June 30, 1949	10,715.52

Total.....\$ 43,389.50

Petitioner's Federal income tax liability on her community income as aforesaid for the taxable years 1945, 1946, 1947, 1948, and 1949 was \$5,240.96, \$28,257.97, \$27,384.49, \$6,165.16 and \$3,241.33, respectively.

Petitioner's aggregate community income during the community property period, after Federal income tax liability, was \$84,686.60.

Lawrence Santos purchased from Bishop National Bank cashier's checks payable to Lawrence Santos and/or Irmgard Santos, on the dates and in the amounts as follows:

Date	Amount
April 15, 1948	\$ 14,000.00
April 16, 1948	12,328.80
November 16, 1948	15,000.00
May 13, 1949	10,718.77
May 16, 1949	13,547.14
August 8, 1950	10,448.84
September 18, 1950	6,229.12

Total.....\$82,272.67

Lawrence gave the cashier's checks to petitioner who retained them. In November, 1950 Lawrence went to California, and on November 22, 1950, he received the checks from petitioner; Lawrence alone endorsed them and purchased through Schwabacher & Company, San Francisco, \$80,000 principal amount of U. S. Treasury 2½% per cent Bearer Bonds for the total price of \$81,674.32. On November 27, 1950, Lawrence took delivery of the bonds and gave his receipt therefor. Lawrence delivered the U. S. Treasury bonds to petitioner who retained them until sold. One \$10,000 bond was sold on April 1, 1952, and the proceeds were used to pay the joint Territorial taxes of petitioner and her husband.

On March 27, 1952, petitioner sold the bonds in the principal amount of \$70,000 through Berl & Company, San Francisco, for the total amount of \$68,287.90, and received checks in that amount payable to her order. Petitioner endorsed the checks in favor of Smith, Wild, Beebe and Cades, of Honolulu. The latter firm deposited the checks in a trust account and then made a check payable to the collector of internal revenue in the amount of \$68,287.90 in payment of the individual taxes asserted against petitioner for the taxable years 1943 to 1947, inclusive, in the jeopardy assessments which had been levied against her. On April 4, 1952, a certificate of discharge of tax liens against petitioner for the years 1943 to 1947, inclusive, was issued by the collector of internal revenue and duly recorded.

In the subsequent and final determination of peti-

tioner's individual income tax liabilities for the years 1943 to 1947, inclusive, which were at issue before The Tax Court of the United States in docket No. 42682, it was determined that petitioner had overpaid her income tax liabilities for the years 1945 and 1946 in the amounts of \$24,768.51 and \$38,237.18, respectively.

The Manufacturers' Shoe Company, Limited, from the time of its incorporation on March 1, 1947, through the taxable year 1952, declared and paid dividends in each of the fiscal years ended February 28, 1949, and February 28, 1951, in the amount of \$8,750. Petitioner's pro rata share of the 1949 dividend from her aforesaid stockholdings in the corporation is included in the amount of her community income hereinabove set forth.

The total value of the assets of Lawrence Santos as of December 31 of each of the following years was in the amount for each of such years as follows:

Year	Amount
December 31, 1947	\$214,640.60
December 31, 1948	205,813.93
December 31, 1949	215,372.66
December 31, 1950	236,843.73
December 31, 1951	237,302.02
December 31, 1952	213,452.24

On December 26, 1951, the first assessment was made against Lawrence Santos with respect to Federal income tax deficiencies for the years 1943, 1944, 1945, and 1946. An additional assessment was made on February 27, 1952. The unpaid liability of Lawrence Santos for Federal income taxes and penalties, incurred but not assessed, at December 31,

1948, December 31, 1949, and December 31, 1950, was \$415,427.73, plus interest. The tax liability at December 31, 1951, and December 31, 1952, was the same, namely, \$415,427.73, plus interest. In addition to the aforesaid Federal tax liabilities Lawrence Santos, as of December 31 of each of the years 1948, 1949, 1950, 1951, and 1952, was indebted to the Manufacturers' Shoe Store in the amounts of \$91,651.69, \$105,856.50, \$120,404.73, \$127,308.70, and \$127,511.70, respectively.

For 1952 petitioner and her husband filed separate income tax returns. Lawrence Santos claimed a loss on his return in the amount of \$4,244.94 incurred on the sale in that year of the \$80,000 U. S. Treasury bonds here in question. Petitioner reported no such transaction or loss on her individual returns although her attorney, who prepared her return, had knowledge that the bonds had been sold. On April 5, 1954, petitioner filed a joint return for the year 1952.

On April 4, 1950, the house at Halelea Place, Manoa Valley, Honolulu, owned by petitioner and Lawrence Santos as joint tenants, was sold for \$21,000. After deduction of \$1,085.10 expenses, net proceeds were \$19,914.90. The Halelea Place house was purchased by the petitioner and her husband on September 23, 1941, for \$14,250, utilizing proceeds from the sale of the house on Oahu Avenue which had been owned by them as joint tenants and which had been sold on March 12, 1941. The Oahu Avenue house was purchased on July 26, 1937, utilizing proceeds from the sale of a house on

Liliha Street, Honolulu, owned by the petitioner and her husband as joint tenants.

The Santos family consisted of petitioner, her husband, and their two minor children. They maintained a home with over \$50,000 worth of furniture in it, and they operated three late-model automobiles. The family was maintained in a manner and style commensurate with the community income.

During the period December 31, 1947, to December 31, 1952, Lawrence Santos was insolvent.

During the period April 15, 1948, to March 27, 1952, Lawrence Santos gratuitously transferred to petitioner property having a value of at least \$68,287.90, and petitioner is liable as transferee to that extent.

Petitioner has failed to show facts sufficient to constitute an estoppel.

Opinion

LeMire, Judge: The primary question presented is whether petitioner is liable as a transferee within the meaning of section 311 of the Internal Revenue Code of 1939.

The respondent has the burden of establishing the receipt of property by the transferee, lack of consideration for the transfer, and the insolvency of the transferor at the time of or immediately after the transfer. There is no issue as to the transferor's liability for income tax deficiencies.

The pertinent facts with respect to the property transferred have been stipulated and are set forth in our findings, and it would serve no purpose to

reiterate them. The record clearly establishes that the transferor at all times material herein was insolvent.

Under the undisputed facts there can be no doubt that the transferee received property from the transferor while he was insolvent. The value of the property received without adequate consideration is contested. There is also a question as to when the transfer or transfers, as the case may be, became effective. The time element bears only upon the value of the property transferred and has little significance here, as will be developed later.

The petitioner and her husband, the transferor, were residents of Honolulu and were subject to the provisions of the Community Property Act of the Territory of Hawaii, which became effective June 30, 1945. Ch. 301A, sr. D-201, Session Laws of Hawaii 1945. This law was repealed effective June 30, 1949. Ch. 301A, sr. D-296, Session Laws of Hawaii 1949.

The record shows that petitioner's share of the community income for the period June 1, 1945, to June 30, 1949, was \$154,976.51, which would likewise represent transferor's share, making a total community income of \$309,953.02. Petitioner's income tax liability on her community income was in the amount of \$70,289.91. Transferor's income tax liability was not less than that amount, making an aggregate tax liability of \$140,579.82. The total community income of \$309,953.02, less the aggregate tax liability of \$140,579.82, leaves the net community income during the community period of \$169,-

373.20. In 1947 petitioner and her husband caused \$105,000 of their community earnings to be changed into the separate property of each, thus reducing the net community income of \$169,373.20 to \$64,373.20, which was the amount left to take care of the community expenses, including Territorial taxes.

Under the provisions of the Hawaiian community property law, the community property is liable for the debts and liabilities incurred for the protection or benefit of the community property. Ch. 301A, Session Laws of Hawaii 1945, sec. 13(c), (d), and (h).¹ There is a rebuttable presumption that com-

¹ Session Laws of Hawaii 1945: Chapter 301A. Community Property. * * *

Sec. 13. Property subject to obligations. * * *

(c) The community property shall be liable for debts contracted by the husband or by the wife or by both, and for liabilities of the husband or the wife or both arising out of tort or otherwise, in any transaction entered into or action taken by the husband or the wife or both relating to the management or control or disposition of or other dealing with or for the protection or benefit of the community property. With respect to the liability of community property for such debts and liabilities, no distinction shall be made between community property subject to the management and control of the wife and community property subject to the management and control of the husband.

(d) As between the community property and the separate property of the wife or of the husband the community property shall be liable for the debts and liabilities referred to in paragraph (c) of this section. * * *

(h) Nothing in this section shall be deemed to affect or modify the obligation of the husband to

munity debts are paid out of community funds even though a separate provision requires the husband to support the wife. *Van Camp v. Van Camp*, 53 Cal. App. 17, 199 Pac. 885; in *re Cudworth's Estate*, 133 Cal. 462, 65 Pac. 1041.

The evidence shows that the Santos family consisted of petitioner, her husband, and two minor children, and that they lived in a style and manner commensurate with their income. The Santoses lived in a home with over \$50,000 worth of furniture and operated three late-model automobiles. Their tax returns, which are in evidence, show that during the community period approximately \$9,000 was paid for Territorial income taxes.

We think the reasonable conclusion to be drawn from the evidence is that the community income was entirely exhausted by the payment of living expenses and other community debts. Thus, the respondent has made a *prima facie* case that the transfers in question were made from the separate property of the transferor, and the duty of going forward with the evidence was upon petitioner. *George M. Newcomb*, 23 T.C. 954, 961. Petitioner made no attempt to show the amount of family living expenses during the critical period nor is there any showing that the transferor paid them from his

support his wife and family and to discharge all debts contracted by the wife for necessities for herself and family during marriage; provided, however, that if and whenever there is community property available for such purpose the husband shall be entitled to resort to such community property rather than to his separate property.

separate property. Reliance is placed upon the fact that the community property law does not relieve the husband of the obligation to support his wife and family. Section 13(h) of Chapter 301A of the Revised Laws of Hawaii 1945, however, provides that the community property may be resorted to for such purpose. See footnote 1, *supra*.

Petitioner argues that one-half the community income became vested in her immediately and that there could be no transfer by her husband of her share. *Rowen v. Commissioner*, 215 F. 2d 641.

This argument overlooks the fact that the community here during the periods in question was still in existence. Until the community is dissolved by divorce or death, the interest of the parties to the community is the profits remaining after the debts of the community are paid. 1 de Funiak, *Principles of Community Property*, sec. 159, pp. 445 et seq.

Petitioner contends that her share of the community income is \$32,186.60. This amount is computed by subtracting the sum of \$52,500, which was transmuted into her separate property by agreement, from the amount of \$84,686.60, which it is stipulated is her share of the community income after her Federal income tax liability. The amount of \$32,186.60 does not take into consideration the liability of petitioner's share of community income for family living expenses and other community debts to which her husband had a right to resort.

In addition to the amount of \$32,186.60 petitioner contends she is entitled to a credit of \$10,000 representing the face amount of a bond retransferred to

her husband, and to a further credit of \$9,957.45 representing the proceeds of her one-half interest in the house sold on April 4, 1950, which was held jointly by her and her husband.

The above amounts aggregate only \$52,144.05, and assuming, for the purpose of argument, the correctness of petitioner's premise, she appears to concede her liability as transferee for a considerable amount, although somewhat less than the respondent has determined.

The respondent concedes that petitioner is entitled to a credit of \$9,957.45, one-half of the net proceeds of the sale of the jointly-held property, which he has taken into consideration.

The evidence establishes that the proceeds of the sale of a bond of the face amount of \$10,000 was applied to the payment of the Territorial income taxes of petitioner and her husband, for which she was jointly and severally liable. Therefore, petitioner is not entitled to a credit for the amount of \$10,000 as a repayment to her husband. The balance of \$32,186.60 we have already held was presumptively exhausted by family living expenses and other community debts properly chargeable thereto.

There remains for discussion the value of the property transferred to petitioner. The record shows that during the years 1948, 1949, and 1950 the transferor purchased cashier's checks in the total amount of \$82,272.67 payable to Lawrence Santos and/or Irmgard Santos. Both petitioner and her husband testified that the checks were given to petitioner at the time of purchase, and she retained

them in her possession until the fall of 1950 when she gave them to her husband for the purpose of purchasing Government bonds. Lawrence purchased U. S. Treasury bonds payable to bearer in the face amount of \$80,000 at a cost of \$81,674.32, and immediately after purchase gave the bonds to petitioner. Whether the transfer was effected at the time the cashier's checks were purchased or at the time the bonds were given to petitioner bears only on the value of the property transferred. After giving petitioner credit for her share of the jointly-owned property in the amount of \$9,957.45, the value of the property transferred would be in excess of the amount of \$68,287.90, as determined by the respondent. On March 27, 1952, the Treasury bonds in the face amount of \$70,000 were sold for \$68,287.90.

Therefore, on this record, we hold that petitioner received a gratuitous transfer of property of the transferor, while insolvent, of the value of \$68,287.90 and is liable as transferee to that extent.

The final issue is whether petitioner has shown facts sufficient to create an estoppel. As to this issue petitioner has the burden.

Petitioner claims that at the time her tax liabilities and those of her husband were under discussion with the revenue agents it was agreed that if she applied the proceeds of the bonds in question to discharge her individual tax liabilities no transferee liability would be asserted against her. The evidence clearly shows that transferee liability was never discussed, but that the agreement related solely to her

individual income tax liabilities. No closing agreement pursuant to section 3760 of the Internal Revenue Code of 1939 was ever executed. If petitioner believed that in discharging her individual tax liabilities she was insulating herself against possible liability as a transferee, she was laboring under a mistake of fact. Petitioner, therefore, has failed to show any basis for the application of the doctrine of estoppel. *Blackhawk-Perry Corp. v. Commissioner*, 182 F. 2d 319, certiorari denied, 340 U. S. 875; *Knapp-Monarch Co. v. Commissioner*, 139 F. 2d 863.

Reviewed by the Court.

Decision will be entered for the respondent.

Murdock, J., dissenting: There are findings that Lawrence gave cashier's checks to the petitioner (mostly during community property years), Lawrence later used them to buy bonds, the bonds in the principal amount of \$70,000 were sold by the petitioner on March 27, 1952 for the total amount of \$68,287.90, the petitioner received checks in that amount, endorsed them, and they were used to pay her individual Federal income taxes for the years 1943 through 1947. The ultimate finding is made that Lawrence gratuitously transferred to the petitioner during the period April 15, 1948 to March 27, 1952, property having a value of at least \$68,287.90, and the petitioner is liable as a transferee to that extent.

I would assume from the above that the holding of transferee liability was upon the theory that sep-

arate property of Lawrence was transferred to the petitioner and used to pay her income taxes.

The giving of the cashier's checks by Lawrence to the petitioner during the period when the community property laws were in effect would appear to be merely the receipt by the petitioner of a part of her share of community property rather than transfers of the separate property of Lawrence. Most of the checks were given during that period. I would not think that any transferee liability would result if the petitioner merely received a part of her share of the community funds during the period when the community property laws were in effect and eventually used those funds to pay her own taxes on her share of the community income.

The transfer of separate property of Lawrence to the petitioner at a time when he was insolvent would, under many circumstances, impress the money in the hands of the petitioner with a trust for the benefit of creditors of Lawrence, including the taxing authorities. However, here the transferred funds were paid to the collector of internal revenue to discharge taxes owed him by the petitioner. It does not appear that she had any other available funds at that time from which she could have paid her taxes. Also it appears that a large part, if not all, of her taxes was due upon her share of community income from the activities of her husband, which income never actually came into her hands. Thus, the Commissioner received the full benefit of the transfer and suffered no detriment by reason of the transfer since but for the transfer he

would not have received payment of the petitioner's taxes. It does not appear that any equity in favor of the Internal Revenue Service would arise under such circumstances.

There is a further complication. The Commissioner determined overpayments of the petitioner's taxes for 1945 and 1946 in the total amount of \$63,005.69, which was less than the \$68,287.90 received for the payment of the petitioner's taxes. But there is no finding that the petitioner actually received the overpayments or of what was done with them or who benefited from them. The Commissioner has the burden of proof to show transferee liability, and it does not seem to me that he has succeeded. Certainly he has not succeeded as to the entire \$68,287.90 unless the burden of going forward shifted at some point not clear to me.

Johnson, J., agrees with this dissent.

Served and Entered June 19, 1956.

The Tax Court of the United States
Washington

Docket No. 46327

IRMGARD SANTOS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, filed June 18, 1956, it is

Ordered and Decided: That the above petitioner is liable, as transferee of the assets of Lawrence Santos, for income taxes for the taxable years 1943 to 1946, inclusive, in the amount of \$68,287.90, together with interest as provided by law.

Enter: June 18, 1956.

[Seal] /s/ C. P. LeMIRE,
Judge

Served and Entered June 19, 1956.

In the United States Court of Appeals
for the Ninth Circuit

Tax Court Docket No. 46327

IRMGARD SANTOS, Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

PETITION FOR REVIEW

Comes now Irmgard Santos, petitioner on review, by her attorney, Robert Ash, and respectfully shows:

I.

Jurisdiction

Petitioner on review is Irmgard Santos, an individual and an alleged transferee of Lawrence Santos, whose address is 3639 Diamond Head Road,

Honolulu, Territory of Hawaii. The alleged transferor, Lawrence Santos, husband of the petitioner on review, filed his Federal income tax returns for the years 1943 to 1946 inclusive with the Collector of Internal Revenue for the District of Hawaii at Honolulu, which is within the jurisdiction of the United States Court of Appeals for the Ninth Circuit wherein this review is sought.

Respondent on review (hereinafter referred to as "Commissioner") is the duly appointed, qualified and acting Commissioner of Internal Revenue appointed and holding his office by virtue of the laws of the United States.

This petition for review is filed pursuant to the provisions of §§ 1141 and 1142 of the Internal Revenue Code of 1939 and §§ 7482 and 7483 of the Internal Revenue Code of 1954.

II.

Prior Proceedings

On October 15, 1952, the Commissioner of Internal Revenue mailed petitioner, as alleged transferee of the assets of Lawrence Santos, a notice of deficiency in which he determined transferee liability against petitioner in the amount of \$68,287.90. Thereafter, the petitioner duly filed an appeal from said determination with the Tax Court of the United States. The case was tried before the Honorable Clarence P. LeMire, Judge of the Tax Court of the United States, in Honolulu, T. H., on July 23, 1954. On June 18, 1956, the Tax Court filed its findings of fact, written by Judge LeMire, and en-

tered its decision ordering and deciding that the petitioner is liable as transferee of the assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946 inclusive in the amount of \$68,287.90, together with interest as provided by law. Two judges filed a dissenting opinion in the case.

Petitioner on review petitions the United States Court of Appeals for the Ninth Circuit to review the order and decision entered by the Tax Court of the United States on June 18, 1956, wherein and whereby it was ordered and decided that the petitioner is liable as transferee of the assets of Lawrence Santos for income taxes for the taxable years 1943 to 1946 inclusive in the amount of \$68,287.90, together with interest as provided by law.

III.

Nature of the Controversy

This proceeding involves the alleged transferee liability of the petitioner, Irmgard Santos, for the income tax liability of her husband, Lawrence Santos, for the taxable years 1943 to 1946 inclusive. During this period, the petitioner and her husband filed separate income tax returns. The Commissioner determined and the Tax Court held that the petitioner was the transferee of the assets of Lawrence Santos in the amount of \$68,287.90. It is the petitioner's position that the Tax Court is in error in determining that the petitioner is liable as transferee of the assets of Lawrence Santos in the amount of \$68,287.90 because there was no transfer

of assets of Lawrence Santos to petitioner. The assets and money involved were the separate property of the petitioner and were used by petitioner to pay her separate Federal income taxes. It is the further position of the petitioner that the Commissioner is estopped from proceeding against her as transferee because of the Commissioner's agreement to apply the proceeds of the assets alleged to have been transferred solely against the petitioner's individual income tax liability.

September 7, 1956.

/s/ ROBERT ASH,

Attorney for Petitioner on Review

[Endorsed]: T.C.U.S. Filed Sep. 7, 1956.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 18, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record on Review" (together with certain documents not called for but included under the rules), including exhibit 1-A attached to the stipulation of facts, and exhibit 2 (petitioner's) and exhibits B to R, inclusive (respondent's), admitted in evidence, in

the case before the Tax Court of the United States docketed at the above number and in which the petitioner in the Tax Court has initiated an appeal as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 14th day of November, 1956.

[Seal] /s/ HOWARD P. LOCKE,

Clerk, Tax Court of the United
States

[Title of Tax Court and Cause.]

TRANSCRIPT OF PROCEEDINGS

District Court. Federal Building, Honolulu,
T. H., Friday, July 23, 1954.

The above-entitled matter came on for hearing, pursuant to notice to the parties, at 10:00 o'clock a.m.

Before: Honorable Clarence P. LeMire, J., presiding.

Appearances: M. M. Goodsill, Esq., P. O. Box 3196, Honolulu, T. H. E. A. Tonjes, Esq., and R. E. Maiden, Jr., Esq., (Hon. Kenneth W. Gemmill,

Acting Chief Counsel, Bureau of Internal Revenue), for the Respondent. [1]*

Proceedings

The Clerk: The appeal of Irmgard Santos, Docket No. 46327.

Will counsel please state their appearances for the record?

Mr. Goodsill: Ready for the petitioner. M. M. Goodsill.

Mr. Tonjes: Ready for the Respondent. R. E. Maiden, Jr., and E. A. Tonjes.

The Court: Are there any stipulations to be filed in this case?

Mr. Goodsill: Yes. If I may, prior to that, I would like to move to file a second amended petition. The petition and amended petition in this case were filed by an attorney by the name of Rogers in California, and he didn't know anything about the case, and it is in very bad form; and I, therefore, have prepared a second amended petition, and I would like to move, at this time, to file it.

Mr. Maiden: There is no objection, your Honor.

I have already prepared the Respondent's answer, which I would like to file concurrently.

The Court: Very well, leave is given to file the second amended petition, and the Respondent is given leave to file an answer to the second amended petition.

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Mr. Goodsill: We also have a stipulation of facts, covering some, but not all of the facts. [3]

The Court: Are there any exhibits attached?

Mr. Goodsill: And there is one exhibit.

Mr. Maiden: One exhibit, your Honor.

The Court: That is Joint Exhibit A-1; is that the way it is marked?

Mr. Goodsill: It is marked Exhibit 1-A.

The Court: Very well, the stipulation, with Exhibit 1-A attached, is received in evidence.

(The stipulation and Exhibit 1-A attached thereto, were thereupon received in evidence.)

The Court: Gentlemen, I would like a brief statement of the facts and issues in the case from counsel for both parties.

Mr. Goodsill: Your Honor, this is a transferee case, the burden of course is on the Government, but I would like to state the facts as well.

The Court: You may state the facts.

Opening Statement on Behalf of Petitioner

Mr. Goodsill: This case involves a transferee liability assessed against Irmgard Santos, who is the wife of Lawrence Santos.

The stipulation shows Lawrence Santos owed taxes and penalties for the years 1943 through 1946 in the amount of \$415,427.73.

Additional income tax deficiencies for the years [4] 1943 to 1947 were also assessed against Mrs. Santos, the petitioner in this case. She contested the deficiency but, in April, 1952, she made a payment

of \$68,287.90 to the Collector, which covered the deficiency assessed against her as an individual. She also filed a claim for refund at that time.

Subsequently, her individual case was settled, pursuant to a stipulation filed in this Court, when your Honor first arrived, which is the stipulation attached to Exhibit 1-A to the stipulation of facts here, and that settlement showed that she had overpaid taxes for the years involved in the amount of about \$63,000; so on her claim for refund, she would have that money coming back, plus interest.

However, in October of 1952, the Government sent her a notice of deficiency as a transferee of the assets of her husband, Lawrence Santos, the transferee liability being in the identical amount of \$68,287.90, and interest and costs in the proceedings.

It is my understanding that the Government's contention is that Lawrence Santos transferred to his wife, Irmgard, assets in the amount of \$68,287.90, without consideration, on account of his unpaid taxes.

The stipulated facts show that in the years 1948, [5] 1949 and 1950, Mr. Santos purchased cashier's checks from the Bishop National Bank of Honolulu in the total amount of a little over \$80,000.

I expect to bring out in evidence, this morning, that promptly after he purchased these checks he gave the checks to his wife. These checks were made out in the name of Lawrence Santos and/or Irmgard Santos.

Subsequently, in 1950, those checks were cashed, and United States Government bearer bonds in the

waiian Trust Company, a local trust company was a special partner, holding a 40 per cent interest under a deed by which Mr. Santos transferred certain property to his children.

The validity of that partnership, incidentally, was at issue in her first case, and I believe the Government conceded, for tax purposes, that it was a limited partnership. In any case, when that partnership was created, in 1944, as I say, nothing was given to Mrs. Santos on account of the interest due to her original contribution of capital and the work that she had done for the company. She complained [8] to him at that time that she had not received anything, but she contended and thought that he had not given her recognition of her share in the business.

On June 1, 1945, the Territory of Hawaii enacted a community-property statute, which lasted until July 1, 1949, and as a result of that community-property statute, the earnings and income of the husband and wife, after January 1, 1945, became community property.

On March 1, 1947, Mr. Santos and the Hawaiian Trust Company formed a corporation known as the Manufacturers Shoe Company, Ltd., to take over the assets of the limited partnership. At the time the corporation was formed, Mrs. Santos had to consent to the transfer of the assets from the partnership to the corporation, and she again repeated her claim, saying she had never been given the share, and Mr. Santos assured her at that time that she would be given a share.

At the time the corporation was organized, Mr. Santos got 60 per cent of the stock, and the Hawaiian Trust Company got 40 per cent. However, about a year later, in April, 1948, she requested the auditors of the company to prepare—to make an examination and prepare a statement showing the portion of the earnings of the limited partnership and the corporation, from the time the community-property started, June 1, 1945, until March 1, 1947, when the [9] corporation was organized, for the purpose of showing how much of those earnings, which were community property, Mrs. Santos was entitled to.

The auditors made that examination, and reported as a result of it that she was entitled to \$52,500 worth of the stock. Thereupon, Mr. Santos caused his share to be cancelled and she was given, out of his share, \$52,500 worth of stock.

The point that we wish to make is that the stock was given to her in recognition of her interest in the earnings of the company during her partnership, during the community-property years, June 1, 1945 to March 1, 1947. Nothing was given to her in recognition of her claim of capital contribution and earnings prior to that time.

Well, she was not satisfied with the \$52,500 stock, and continued to make claims on her husband, and he said that, as he got more money, as he got funds, he would give it to her in recognition of her claim of her interest in the old business and her claim for community-property earnings.

Also, in 1950, a home that they owned as joint ten-

ants, and had purchased with the proceeds of the previous home that they owned, was sold, the proceeds of about \$19,000—Mr. Santos kept all that and it is our view that she is—was entitled to a share in that, worth at least \$9,000.

So with that background, in 1948, on several days, [10] and in 1949, on several days, 1950 on several dates, Mr. Santos purchased these cashier's checks in the name of himself, Lawrence Santos and/or Irmgard Santos, and he delivered those checks immediately after purchase to his wife, who kept them.

In November of 1950, Mrs. Santos was on the Coast, where her children were in school. She kept in touch with Mr. Santos here, and they discussed together at that time what they ought to do. She thought she ought to get some interest, so she suggested that she turn the checks in and get Government bonds. She gave him the checks, and he went to the Schwabacher & Frye Company in San Francisco, and with them he purchased \$80,000 bearer Government bonds, and his testimony is that he gave them to her, and he never saw them again, and she will testify that she kept them in her possession from that time until she paid her taxes.

In March of 1952, at a conference between Mr. Santos, his attorney and the Revenue people, and after several conferences and visits by him to the Coast, and telephone calls, he persuaded his wife to turn in her bonds and pay her individual income tax liability, which she did. She sold the bonds in San Francisco on March 27, 1952, and a check for

the proceeds in the amount of \$68,287—the amount was made payable to her in two checks, and she endorsed the checks in favor of Smith, Wild, Beebe and Cades, [11] attorneys in Honolulu here,—sent them to that firm, and they, I believe, deposited them in their trust account, and drew checks for the same amount to the Collector of Internal Revenue for her individual taxes.

She filed a claim for refund in October, 1952, several months after that transaction, and just recently her individual case was settled, and she will get back about \$53,000. Of course, she won't get that back if the Government is successful in this proceeding.

I believe those are the typical facts.

Opening Statement On Behalf of the Respondent

Mr. Maiden: If your Honor please, I cannot go along entirely with the delineation of facts as my good friend Mr. Goodsill says them. However, the basic facts are not in dispute.

Our stipulation of settlement shows that Mr. Santos purchased these cashier's checks; that in 1950, those cashier's checks were endorsed by him, and the Government bonds purchased; and then in 1952 those bonds were cashed and the proceeds were made payable to Mrs. Santos, who, in turn, paid them over to the Collector of Internal Revenue, in satisfaction of the tax liability then assessed against her.

The stipulation of facts shows that Mr. Santos was, at all times from 1948 through 1952, hopelessly

insolvent, when consideration is given to the fact that his total assets [12] were only worth—the total value of his assets, if the Court please, were only around \$230,000 at the very most, and his Federal Income Tax liability, and fraud penalties, exceeded \$417,000, or \$427,000.

Now, the Court please, the issue has been clearly stated, and the facts will fall into the record, will speak for themselves. There is no need of my further renumerating the situation.

This question of estoppel raised by Brother Good-sill is, I must say, most unusual, a most unusual thing. I do not understand, if the Court please, that any such representations were made to Mr. Santos or Mrs. Santos, or any of their representatives; and if such representations were made to either of the parties, or their representatives by any agent of the Government, I submit that is wholly irrelevant and immaterial; and not only does the issue in this case, which is whether or not she is liable as transferee of the assets of her husband, in the amounts specified in the statutory notice, but also, if the Court please, oral statements or otherwise, made by agents of the Collector's office here, are not, could not, never would be and are not now binding on the Commissioner of Internal Revenue.

If the Court please, at this time, as an addition, in addition to the stipulation of facts, which has just gone [13] into evidence, I would like to offer the income tax return.

The Court: I take it there is no objection?

Mr. Goodsill: Whose returns?

Mr. Maiden: I am going to offer them both.

Mr. Goodsill: No objection.

Mr. Maiden: I have photostatic copies of these returns for the years involved, your Honor.

Mr. Tonjes: Your Honor, might I make a brief inquiry at the moment?

The Court: You may.

Mr. Tonjes: Mr. Goodsill has stated that certain representations were made by Government officials. The term was used rather loosely, and in order to avoid some delay later, I anticipate that Mr. Goodsill will attempt to put on testimony and establish with whom these conversations were, and I think, in order to avoid delay later, if he could inform us now, we can have these people present, and put them on to controvert whatever testimony there might be,—if the Court permits, of course.

Mr. Goodsill: I was going to examine Mr. Santos, as well as Mr. Cades, and they will testify to their understanding of these matters, I believe. I believe the persons present, as far as I know, were Mr. Alsup, who was then the Collector——

Mr. Tonjes: Mr. James Alsup? [14]

Mr. Goodsill: Yes, and Mr. Robertson, and I believe you were present at some of them.

Mr. Tonjes: I just had in mind the Government officials, your Honor, and I could have them present.

The Court: Yes.

Mr. Goodsill: Mr. Robertson, the Assistant Collector, Mr. Tonjes, Mr. Chun, Mr. Patterson.

Mr. Tonjes: Mr. Chun will be available. Mr.

Patterson is not available, as he is on the mainland.

The Court: Very well.

Mr. Goodsill: I think that is all.

The Court: Is that enough information for your purposes?

Mr. Tonjes: That will be helpful, your Honor. Of course, I have no authority over Mr. Alsup, as he is the former Collector, and he is no longer in the Federal Service, so Mr. Goodsill will be on his own as far as he is concerned.

The Court: Very well.

Mr. Maiden: Now, if the Court please, we offer in evidence, as Respondent's Exhibit B, the 1945 individual income tax return of Irmgard Santos.

The Court: There being no objection, Respondent's Exhibit B will be received in evidence. [15]

(Respondent's Exhibit B was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit C, the 1946 individual income tax return of Irmgard Santos.

The Court: There being no objection, Respondent's Exhibit C is received in evidence.

(Respondent's Exhibit C was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit D, the 1947 individual income tax return of Irmgard Santos.

The Court: Respondent's Exhibit D is received in evidence.

(Respondent's Exhibit D was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit E, the individual income tax return of Irmgard Santos for the year 1952.

The Court: Respondent's Exhibit E is received in evidence.

(Respondent's Exhibit E was thereupon received in evidence.)

Mr. Maiden: As Respondent's Exhibit F, I now offer [16] in evidence the individual income tax return of Lawrence Santos for the taxable year 1945, which is the original return.

The Court: Very well, Respondent's Exhibit F is received in evidence.

(Respondent's Exhibit F was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence Respondent's Exhibit G, the amended 1945 individual income tax return of Lawrence Santos.

The Court: Respondent's Exhibit G is received in evidence.

(Respondent's Exhibit G was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit H, the 1946 individual income tax return of Lawrence Santos, identified as amended return.

The Court: Respondent's Exhibit H is received in evidence.

(Respondent's Exhibit H was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence Respondent's Exhibit I, individual income tax return of

Lawrence Santos for the year 1946, also, identified as completed.

The Court: Respondent's Exhibit I is received in [17] evidence.

(Respondent's Exhibit I was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence Respondent's Exhibit next in order, J, the individual income tax return of Lawrence Santos for 1947.

The Court: Respondent's Exhibit J is received in evidence.

(Respondent's Exhibit J was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence Respondent's Exhibit K the joint income tax return of Lawrence and Irmgard Santos for the year 1948.

The Court: Respondent's Exhibit K is received in evidence.

(Respondent's Exhibit K was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence as Respondent's Exhibit L the joint returns of Lawrence and Irmgard Santos for 1949.

The Court: Respondent's Exhibit L received in evidence.

(Respondent's Exhibit L was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as [18] Respondent's Exhibit M, the 1950 joint return of Lawrence and Irmgard Santos.

The Court: Respondent's Exhibit M is received in evidence.

(Respondent's Exhibit M was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit N, the joint income tax return of Lawrence and Irmgard Santos for the taxable year 1951.

The Court: Respondent's Exhibit N received.

(Respondent's Exhibit N was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit O, the individual income tax return of Lawrence Santos for the year 1952.

The Court: Respondent's Exhibit O is received in evidence.

(Respondent's Exhibit O was thereupon received in evidence.)

Mr. Maiden: I next offer in evidence, as Respondent's Exhibit P, the joint return of Lawrence and Irmgard Santos for the year 1952, identified as revised.

The Court: Respondent's Exhibit P received in evidence. [19]

(Respondent's Exhibit P was thereupon received in evidence.)

Mr. Maiden: Your Honor, please, on the basis of the stipulation of facts and the exhibits and the pleadings, the Respondent turns the matter over to Mr. Goodsill.

The Court: The Respondent rests?

Mr. Maiden: Yes, sir.

Mr. Goodsill: If your Honor please, I would like to call Mr. Santos first.

LAWRENCE SANTOS

was called as a witness by and on behalf of the petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Goodsill): Will you state your name, please? A. Lawrence Santos.

Q. Mr. Santos, you are a resident of Honolulu?

A. Yes, I am.

Q. What is your occupation?

A. President of the Manufacturers Shoe Store.

Q. You are the husband of the petitioner, Irmgard Santos? A. Yes.

Q. When were you married? [20]

A. 1928.

Q. At the time you were married, what was your financial condition; in other words, where were you working and what was your income?

A. I was working at the Union Trust Company and was earning about \$175, I think.

Q. That was in 1928? A. That's right.

Q. What was your job, up to the time in 1937 when you started Persan's?

A. I went from the Union Trust Company to the Home Owners Loan Corporation, and then I was unemployed for a few months, then I formed Persan's Shoe Store.

Q. About how much was your salary at the Home Owners Loan Company? A. \$200.

Q. Was your wife working, after she was mar-

(Testimony of Lawrence Santos.)

ried? A. Yes, she worked all of the time.

Q. Where did she work?

A. She worked at the Honolulu Gas Company.

Q. In 1928, until——

A. She was working when I married her.

Q. Do you recall her salary?

A. I think, when we first got married, it was around \$125, and went up to around \$165. [21]

Q. How long did she work at the Gas Company?

A. Until 1941, 'til the war broke out.

Q. At the time you started Persan's, Ltd., did you have any assets, other than the salaries of yourself and wife? A. No, I did not.

Q. At the time that company was started, how did you get the \$5,000 you put into it?

A. We mortgaged our home up in Manoa; my wife and I owned that home as joint tenants, and I mortgaged it to my uncle, and took the proceeds of \$5,000 and invested it in Persan's, Ltd.

Q. During the time you operated Persan's, Ltd., did your wife work there at all?

A. Yes; she would come in and help out on Saturdays, and whatever extra time she had.

Q. Did she claim an interest in that business?

Mr. Tonjes: I object to that, your Honor, as irrelevant.

Mr. Goodsill: I think it is significant, your Honor, in showing that she had a claim from the beginning of an interest in Persan's, Ltd., and his subsequent shoe business, and that is one of the

(Testimony of Lawrence Santos.)

reasons he made these subsequent transfers of checks, of cashier's checks, to her.

The Court: Well, I think the principal thing is [22] whether she had an interest, rather than what she claimed, but I will overrule the objection and permit the witness to answer, for whatever it may be worth.

Q. (By Mr. Goodsill): Did she claim an interest in the Persan's business?

A. Yes, she did.

Q. You formed a limited partnership on July 1, 1944? A. That is correct.

Q. At that time did you give any—at that time, did you provide that your wife would have any interest in the limited partnership? A. No.

Q. What was her reaction to that?

A. That is when we started having trouble over it, because she felt that she had an interest coming in there, and I had not provided any interest for her, and I had taken care of just the children.

Q. When you organized the Manufacturers Shoe Company on March 1, 1947, did you do anything to give her an interest in that?

A. Yes, I did. She objected to that, there was a bill of sale, or something, that we had to have her sign, and she didn't want to sign the bill of sale, so I told her that I would give her whatever [23] interest she had in the community property, in what Manufacturers Shoe Company had made, and I requested that an audit be made on that.

Q. The community property started in 1945.

(Testimony of Lawrence Santos.)

A. That is right.

Q. What did the audit show?

A. The audit showed that she had \$52,500 of interest during that period, according to the auditors.

Q. During the period of June 1, 1945——

A. June 1, 1945, to——

Q. The corporation was started in March, 1947?

A. To 1947.

Q. That was her interest. How did it arise?

A. It arose from the profits of the shoe company, the Manufacturers Shoe Company.

Q. Did you give her any stock to satisfy her claims or the interest she claimed in Persan's, the operations prior to June 1, 1945?

A. I couldn't then, because my capital was limited, and I just gave her the \$52,500 at that time, which was stock I gave her.

Q. Did you promise her anything else?

A. I promised I would give her cash, as soon as I had it available.

Q. In 1950 you sold your home?

A. Yes, I did. [24]

Q. How was it owned?

A. It was owned as joint tenants.

Q. How much did you get out of the sale of the house?

A. \$19,000—and something, almost \$20,000.

Q. Did you then give half of the proceeds of the sales to your wife?

A. No, I did not.

Q. The stipulation shows that the house was

(Testimony of Lawrence Santos.)

purchased with the proceeds of the sale of the previous houses, going back to the first house you owned on Liliha Street. A. That is correct.

Q. How did you get the money to pay for that Liliha Street house?

A. That was from our joint earnings.

Q. At the time you were both working?

A. When we were both working. That was purchased around 1932.

Q. How was the title in that house held?

A. It was held jointly.

Q. Joint tenants?

A. My wife and I, yes.

Q. The stipulation also shows, Mr. Santos, that in 1948, 1949, and 1950, you purchased certain cashiers' checks at the Bishop National Bank, the total amount of about \$81,000. [25]

What did you do with these checks?

A. I—as I purchased them, I turned them over to my wife as our agreement. We were having difficulties about financial amounts that she was to have and I told her then that I would start paying her as I could, from month to month, until I could square up with her.

Q. What was this supposed to represent?

A. It was supposed to represent her interest in Persan's and what she had in the Manufacturers Shoe Store, and the rest of the things that she claimed I owed her.

Q. Did you ever give your wife any money or assets other than the \$52,500 in stock, to satisfy

(Testimony of Lawrence Santos.)

her claim for a share in Persan's, or her claim on account of the community earnings, or a claim on account of the proceeds of the sale of the houses?

A. No.

Q. What happened to the cashiers' checks, after you gave them to your wife?

A. In 1950, when I went up to the mainland, we discussed——

Q. Your wife was there?

A. My wife was on the mainland when I went up there. She had gone up before that, I believe in August of 1949, and she was there in 1950 when I got there, and she decided she wanted to get some interest on this share, and I told her [26] that I thought the best investment at that time will be Government bonds, and she agreed that they were, and so——

Q. What did she do then?

A. She turned over the cashiers' checks to me to purchase these Government bonds.

Q. Where did you purchase them?

A. I purchased them at Schwabacher & Frye's.

Q. What did you do then? Did Schwabacher & Frye deliver the bonds to you, personally?

A. Yes. It took about three or four days later, before the bonds were gotten, and when they were gotten, we were called up and I went down and picked them up.

Q. What did you do with them when you picked them up?

A. I turned them over to Mrs. Santos.

(Testimony of Lawrence Santos.)

Q. How long after you picked them up?

A. The same day.

Q. Did you ever see the bonds again?

A. No, I didn't see the bonds at all, with the exception of one bond that I saw in later years.

Q. What bond was that?

A. That was the bond to pay our joint taxes, the Territorial tax.

Q. What was the principal amount of that bond? A. \$10,000. [27]

Q. The other \$70,000 you never saw again?

A. No, I never did.

Q. You stated that you started having domestic difficulties with your wife in 1944?

A. That is right.

Q. Did you continue to have trouble with her?

A. Yes, we did.

Q. Did she ever leave you?

A. Yes, she did.

Q. When?

A. I think it was around, sometime in 1950, then in 1952, when she filed for separate maintenance.

Q. She filed for separate maintenance where?

A. In San Francisco.

Q. Did she obtain a decree in that case?

A. Yes, she did.

Q. Was service ever made on you?

A. No, because I didn't go into California.

Q. The decree was on the basis of publication?

A. That's right.

(Testimony of Lawrence Santos.)

Q. Has that decree ever been withdrawn, to your knowledge? A. No, it hasn't.

Q. When did Mrs. Santos return to Honolulu?

A. When her daughter was sick in 1953, in [28] December of 1953, I believe.

Q. What finally happened to the \$70,000 worth of bonds which you delivered to her in San Francisco?

Mr. Tonjes: Objected to, your Honor. The witness testified he never saw them again.

The Court: If he knows, he may say so. If he doesn't know, he may so advise.

Q. (By Mr. Tonjes): Do you know?

A. What is the question?

Q. (By Mr. Goodsill): Do you know what happened to the \$70,000 worth of bonds that your wife had in San Francisco, even though you never saw them again?

Q. (By the Court): Do you know of your own knowledge, not what somebody told to you?

A. They were sold to——

Mr. Tonjes: Wait! Do you know? The question is, do you know what happened to them?

Q. (By the Court): Do you know of your own knowledge?

A. Yes, I know what happened to them.

Q. (By Mr. Tonjes): Do you know what happened to the bonds? [29]

A. What is the question?

Mr. Goodsill: I will withdraw the question and start over again.

(Testimony of Lawrence Santos.)

Mr. Tonjes: All right.

Q. (By Mr. Goodsill): In 1951 and 1952, did you have a certain conference, or conferences, with Internal Revenue officials concerning your tax situation? A. Yes.

Mr. Tonjes: That is objected to, your Honor. As I recall, we are not concerned with Mr. Santos' liabilities, except as it forms the basis of the penalties we are seeking to collect here, and counsel has made no allegation that that is inaccurate, in any respect.

The Court: I can't see how it is material in this proceeding, what conversations he had with the Commissioner's representatives in regard to his own taxes.

However, he has already answered the question and I am going to permit the answer to stand, but I don't see any necessity of going into details about it.

Mr. Goodsill: Your Honor, the purpose of this is to bring out the estoppel point, which I have raised in the pleadings, to show that there was some kind of understanding with the Revenue people, as a result of which she paid this money on her individual taxes, the understanding being [30] that she would be allowed to keep anything that she got back as a refund; but what happened was that they turned around and put this deficiency, this transferee assessment on her, they repeated that to her. She never had any conferences with

(Testimony of Lawrence Santos.)

these officials, so I have to do it by means of their recollection.

The Court: I take it that Mr. Tonjes is going to object to the materiality of that testimony, too.

Mr. Tonjes: I would like to briefly express my position, if the Court please.

The question here is whether or not the petitioner received any property or money, or anything of value, under circumstances which would make her liable as a transferee, and the testimony sought to be elicited from this witness is what happened to the property she received, if any, after she received it, and the Respondent contends that is wholly immaterial.

The liability becomes fixed, when she received the particular cash or other assets, and what is done with it I think is wholly immaterial.

The Court: I am inclined, Mr. Tonjes, to be of the opinion that your position is a correct one, but if it is, I can always disregard this testimony, and if I find that, for any reason at all it might be competent I would like to have it in the record.

I will permit the witness to answer.

Do you have something else to say?

Mr. Maiden: Yes, I just want to state, your Honor, that regardless of what representations may have been made to Mr. Santos, or any of his representatives, they are not binding on the Commissioner; it is a fact which, if found by the Court, will have absolutely no relation to the issue falling upon the Court to decide.

(Testimony of Lawrence Santos.)

Now, this is going to take a long time, to go into the testimony of, I understand, several witnesses, to go into this point, which is so obviously irrelevant and immaterial, and, in the final analysis, wholly without any effect upon the decision of the Court, and I submit it is a waste of time that we should not indulge in.

The Court: I am inclined to agree, Mr. Maiden, but on the strength of the fact that I am often mistaken in matters of the incompetency of evidence——

Mr. Maiden: We all are, of course.

The Court: The courts reverse us frequently on the ground of improper exclusion of evidence; so I am going to overrule your objection at this time, and permit the witness to answer, for the reason that I can always disregard it if I find that it is not competent; and if the examination of the witness gets to be too extended I can always stop it.

Mr. Maiden: Yes. If your Honor please, in [32] order to save time, may it be understood at this time, that all questions asked along this line by Mr. Goodsill of any and all of the witnesses are objected to by us?

The Court: Yes, it will be understood that your objections to that time of testimony, and your exceptions will be noted.

Mr. Goodsill: I will try to keep it as short as I can.

The Court: Yes; I suggest, Mr. Goodsill, that you make your examination as brief as possible on

(Testimony of Lawrence Santos.)

that matter because, offhand, I am inclined to believe that the objection may well be taken.

Mr. Goodsill: Thank you.

Q. (By Mr. Goodsill): You had certain conferences with the officials of the Internal Revenue Service in 1951 and 1952?

A. 1951 and 1952, yes.

Q. In those conferences, was there any discussion about these bonds your wife had?

A. Yes. After they had gotten my assets they asked me what more that I could pay towards the taxes, and I said there was nothing else I could pay, but that my wife had some Government bonds, and Mr. Robertson told me—he said to me at the conference, that if it would be possible for me to get those bonds from my wife, and I told Mr. [33] Robertson I did not know, and he then suggested, along with Mr. Alsup and Mr. Tonjes, I believe in one of the conferences, that I go up to the mainland and try to get those bonds from my wife.

I went up to the mainland specifically for that in March—I believe it was March 2nd to March 5, and——

Q. What year?

A. I looked it up and I think it was March 5, March 2 to March 5, 1951, and had a talk with her, and she agreed that she would sell these bonds, if they were to pay her taxes and she would be free and clear.

I came back. We had a conference with Mr. Robertson, Mr. Tonjes and Mr. Alsup and in the

(Testimony of Lawrence Santos.)

interview, when I was interrogated the question was asked me about the bonds. I told them that my wife was willing to pay the bonds to release her tax. Mr. Robertson asked me then, in this interrogation——

Mr. Tonjes: I object to the testimony, your Honor. I think that it should be established that this record is being made subject to a written document of some kind. If it was, I should say that the document, itself, should be offered, rather than Mr. Santos' recollection of what transpired.

The Witness: There is a written document.

Q. (By Mr. Tonjes): Do you have a copy of it?

A. Yes, sir.

Mr. Goodsill: There purports to be a typewritten, unsigned copy of the proceedings on March 27, 1952, which I believe probably was typed by a stenographer in your office, Mr. Tonjes. As far as I know it is accurate, but I cannot establish the authenticity of it. I am willing to put it in evidence, Mr. Tonjes, if you are willing to accept it, and if the Court is.

It purports to be a stenographic transcript of this conference of March 27.

The Witness: Correct.

The Court: It might be, Mr. Tonjes, if we recess for five minutes, to give you an opportunity to look that over, you could obviate the necessity of taking the testimony of these witnesses, and reserve your objection to the competency of the document and its binding effect upon the Commissioner.

(Testimony of Lawrence Santos.)

Mr. Tonjes: I have what I think is a copy that I can compare, if your Honor please. Mr. Robertson is here, and I can give it to him and Mr. Goodsill can proceed, and in a moment or two I will be able to state whether I have any further objection.

The Court: Very well.

Mr. Goodsill: Do you want me to pass to [35] another subject while he does that?

The Court: If you have anything else, yes.

Mr. Goodsill: I have one other subject.

Q. (By Mr. Goodsill): Mr. Santos, when you purchased the cashiers' checks in 1948, 1949, and 1950, gave them to your wife, did you have any idea of what your Federal tax liabilities were?

A. I had no idea whatsoever.

Q. Did you think you were insolvent?

A. No, I did not.

Mr. Tonjes: Objected to, your Honor, as immaterial what he thought.

The Court: The objection will be overruled.

Mr. Goodsill: I think that is all, but I have a couple more questions on this when Mr. Tonjes is through.

Mr. Tonjes: The Respondent will stipulate, if the Court please, that this is a copy, an accurate copy of the transcript of the conference held in the office of the Collector on March 27, 1952.

Q. (By Mr. Tonjes): Is that the date you had in mind, Mr. Santos? Perhaps if you read one or

(Testimony of Lawrence Santos.)

two of the questions, you might recall the circumstances.

A. The question regarding the bonds? [36]

Q. You stated that there was some sort of agreement made. Is that the conference you had in mind?

A. The conference I had in mind was the conference that led up to my trip to the mainland on March 2nd to March 5, and from those conferences on to this one year, when it was agreed on, and I have put in two telephone calls to my wife to go ahead with the sale of those bonds, because of these stipulations that were in this agreement here (indicating).

Q. You referred to an agreement. Do you have any idea in your mind right now as to what date that was?

A. Do you mind repeating that?

Q. Do you have any idea in your mind, now, with respect to the date of the conference, at which the agreement was reached that you speak of?

Q. (By the Court): Was it this conference on this date?

A. It was previous to this date, and also on this date. We had more than one conference or talked about the sale of the bonds.

Q. Was it all included—are all the agreements included in this last conference?

A. Yes, sir.

Q. (By Mr. Goodsill): You had a conference prior to March? [37]

(Testimony of Lawrence Santos.)

A. Right. Mr. Robertson told me if I could go up to the Coast and see what I could do about getting these bonds, and I left specifically on March 2nd for the mainland.

Q. Do you know if there were any written records of those previous conferences?

A. There possibly could be. They had their secretary there, taking notes down, but we never did have anyone. Mr. Milton Cades was present at some of these conferences.

Mr. Tonjes: If I may interrupt, if there was an agreement, it would be expressed in the last conference, wouldn't it? The other conference would be more or less preliminary to that, wouldn't it?

The Witness: They would be preliminary to the extent that that was why I went to the mainland.

Q. (By Mr. Goodsill): When you went to the mainland, you thought that was the understanding that the bonds would be sold and applied to her taxes? A. That is correct.

Mr. Tonjes: Let me then again ask this question.

Q. (By Mr. Tonjes): Do you identify that as a record of the conference held on March 27?

A. I recognize it as being a part of the record, just a part of it. Unfortunately, we do not have [38] the rest of the things in writing. We do have this one in writing.

Q. What else was there, if you recall?

99 A. A telephone call on the 16th of March, and your record will show what date we were down

(Testimony of Lawrence Santos.)

there. I believe you have the record of the days we had our conferences.

Q. (By Mr. Goodsill): I think you misunderstood Mr. Tonjes. I think he wants to know if that is a complete record of the conference on March 27.

A. Yes. I am sorry. This is all we did on March 27, yes.

Mr. Tonjes: Then, subject to the objection of the relevancy of the entire matter, your Honor, I will identify the document as being a correct copy of the conference held on that date.

Mr. Goodsill: I would offer it in evidence, your Honor, as Petitioner's Exhibit No. 2.

The Court: Very well. I am going to receive the document in evidence, overruling your objection, and bearing in mind that if I find it is not competent and binding, I can disregard it. I am admitting it solely for the purpose of avoiding the necessity of the introduction of a lot of oral testimony in regard to what transpired at these conferences.

It is Petitioner's Exhibit No. 2, received in [39] evidence.

(Petitioner's Exhibit No. 2 was thereupon received in evidence.)

[See pages 174-201.]

Q. (By Mr. Goodsill): You said you made some phone calls to your wife on March 26?

A. That is correct, two calls.

Q. What did you tell her in those calls?

A. I told her that we had reached an agree-

(Testimony of Lawrence Santos.)

ment with the Government, and the Government had O.K.'d the release of her taxes, and if there were any refunds to be made, that they would be payable to her through this conference, what I had said under oath to Mr. Robertson and the rest of them there.

Q. Do you know what she did then?

A. Yes; she went and sold the bonds through Burrell & Sons, and had the check made payable to Smith, Wild, Beebe and Cades, and sent it down.

Mr. Goodsill: That is all.

Cross Examination

Q. (By Mr. Tonjes): Mr. Santos, your difficulties in tax matters have extended over quite a few years, have they not? A. Yes.

Q. You had a series of conferences with the [40] representatives of the Internal Revenue Bureau, commencing as early as 1950, perhaps?

A. Right after the liens were issued.

Q. That was a jeopardy assessment made against you and the Manufacturers Shoe Company, that was in connection with the matter of collecting sums assessed, which gave rise to these conferences; is that right? A. Yes, sir.

Q. There were several agreements in writing relating to whether the Bureau would proceed to enforce collection, or delay it for some time; do you recall that?

A. Yes, except that I would say the conferences

(Testimony of Lawrence Santos.)

that were held were primarily with the idea of selling me out of the business.

Q. Giving consideration to whether the Government would or would not?

A. That is correct.

Q. Now, in that connection, there were several agreements executed in writing, were there not?

A. Right.

Q. Now, do you know of any agreement, at all, except the one you mentioned just now, relating to your wife's property, had with the Government officials which were not reduced to writing?

A. Do I know of any? I would like the question again. [41]

Mr. Goodsill: I object to the question, your Honor. I think he has already testified that was an oral agreement.

Mr. Tonjes: Yes, but I want to know——

He may so state, if that is true.

Q. (By Mr. Tonjes): You stated that you had an oral agreement with certain representatives of the Bureau? A. Yes, sir; correct.

Q. You also stated that there were several agreements in writing executed with the Bureau?

A. Regarding the selling of the stock.

Q. Yes. A. That's right.

Q. The sale of the stock and the management of your business, and so on? A. Yes, sir.

Q. And they were all reduced to writing?

A. That's right.

Q. Now, were there any other agreements, be-

(Testimony of Lawrence Santos.)

sides this one, which related to your wife's property, that was not reduced to writing?

A. Yes, sir.

Q. Which one was that?

A. Part of it I would say would be the agreement with my wife. [42]

Q. I mean in addition to that, were there any other agreements entered into, which were not reduced to writing, with Government officials?

A. Yes, there were some other things that I can't remember.

Q. What did they relate to?

A. I would have to look at the agreement to tell you what they are.

Q. I mean oral agreements, Mr. Santos.

A. There were other oral agreements that were not put into writing. Is that what you mean, there were others.

Q. Yes.

A. I think Mr. Cades would be able to answer that better than I could.

Q. Do you know? A. No.

Q. (By the Court): Do you know?

A. No.

Q. (By Mr. Tonjes): Do you know the circumstances which prompted the parties to the agreement to enter into an oral agreement at this time?

A. Do I know the circumstances? Yes, I do.

Q. What were they?

A. That they had gotten all of the money that

(Testimony of Lawrence Santos.)

they could from me and they wanted some more money, that is what prompted the inclusion of my wife into it—her money.

Q. What was the specific agreement? Who said what to who?

A. Mr. Robertson was there present at the time, you were present, and I believe either Mr. Chalk or Mr. Chun was present, Mr. Cades was present, and it was with the understanding that—the question was this: If I didn't get more money, the agreement would be off. We had an agreement one day and it was off the next; it was on the next, and off the next.

Q. What agreement was on and off?

A. The Government agreement that they had with me. We had one agreement with Alsup that we were going to continue and something would come up, and we would have to be called back into conference again, and the thing would be revived over again.

Q. Was your wife's income tax liability ever under discussion in any of these conferences?

A. Yes, definitely.

Q. What phases of it, do you know? Was it her liability as transferee or individually?

A. Her liability as a taxpayer. The transferee [44] came out of the blue sky, I knew nothing about it until afterwards.

Q. Do you know what discussion you had concerning the transferee liability of your wife, if any?

A. What discussions were had?

(Testimony of Lawrence Santos.)

Q. Yes.

The Court: I think he has, in effect, answered that, Mr. Tonjes. He says it came out of a blue sky, and I take it there were no discussions.

Mr. Tonjes: The point is, your Honor,—

Q. (By Mr. Tonjes): Now, had you ever informed any of the Government officials prior to this meeting of—

A. March 27?

Q. —March 27, that you had transferred the sum of \$70,000 or \$80,000 worth of bonds to your wife?

A. Yes, sir.

Q. You had mentioned it prior to that date?

A. Yes, sir.

Q. To whom did you mention it?

A. To the people in the conference, when I was represented by my attorney.

Q. At some time prior to this date?

A. Prior to March 27, yes. [45]

Q. (By the Court): What year was that?

A. 1952.

Mr. Tonjes: This is 1952, your Honor.

Q. (By Mr. Tonjes): Do you know who they were?

A. I would say, by the routine of the conferences that we had, that it would be Mr. Robertson, and whoever the director was, yourself, and Mr. Chalk or Mr. Chun. That used to be a part of the group that was always present. That is my recollection. That is what my recollection would be. You have a couple of other interrogations that were taken of mine and you might find them in there

(Testimony of Lawrence Santos.)

also. We never did get copies of those. That is the only one that we have a copy of.

The Court: We will recess for five minutes while you locate that, Mr. Tonjes.

Mr. Tonjes: Very well, your Honor.

(Thereupon a brief recess was had.)

The Court: Gentlemen, we are going to interrupt the case on trial right now and take up a motion, which we will be able to dispose of in a short time.

(Whereupon the hearing was recessed while the Court took up other matters.) [46]

The Court: Now, gentlemen, we are ready to proceed with the Santos case now on trial.

Cross Examination—(Continued)

Q. (By Mr. Tonjes): Mr. Santos, would you please repeat again what you understood to be the agreement made with the Government officials, that you spoke of previously?

A. In conferences with the tax officials, the agreement was that, if I could get my wife to sell these bonds and to pay her deficiency in taxes, she would be relieved of her taxes, which she was, and the release was made. And I was asked if there was any money coming back to her would it be applied on my taxes, and I said no, it would not be, because I had talked to her about it and she had said no.

These were in conferences previous to the March 27th conference. The March 27th conference was an

(Testimony of Lawrence Santos.)

interrogation of me, and had nothing to do with my wife.

Q. In any of these conferences, was there any discussion had with respect to the liability, if any, of Mrs. Santos, as the transferee of you?

A. No, because there was no transferee claimed at that time.

Q. Transferee assessment?

A. There was no transferee assessment.

Q. So whatever discussion you had would not [47] relate to her liability as transferee, as involved in this proceeding here this morning?

A. Well, it related, but it was to clear her of all of her taxes, there would be no——

Q. But now—go ahead.

A. There would be no transferee assessment.

Q. You say there was such a discussion?

A. Not in words, but there would be no transferee assignment, but that she would be liable for no taxes of that type.

Q. Was the word “transferee” ever mentioned, to your knowledge?

A. No, I don't think it was.

Q. Now, at that conference of March 1952, there was some questions and answers—questions propounded by me and you gave the answers, and I will read them to you, to refresh your recollection.

You recall that the purpose of these discussions was to determine whether you had any property which might be subject to taxes, for the satisfaction of your tax liability; is that correct?

(Testimony of Lawrence Santos.)

A. Yes, sir.

Q. Now, the question was:

“Do you have any other evidence of indebtedness? “Answer: Of indebtedness?

“Question: Yes; does anyone owe you any [48] money? Do you understand the difference between stocks and bonds. Do you own any Government bonds? “Answer: Yes, my wife’s bonds.

“Question: Your wife’s bonds? Did you give them to your wife?

“Answer: I don’t know how to answer that question.

“Question: What is the name of these bonds?

“Answer: Government bonds.

“Question: How much are they worth; what is the face value? “Answer: About \$70,000.

“Question: Where are they now?

“Answer: My wife has them and she is selling them.”

Now, are those the bonds that we had in mind at that time, or you had in mind when you answered my questions? Were they the bonds which you spoke of, that were bought from Schwabacher?

A. Yes.

Q. Now, did you mention, at any time, to any Government representative, prior to that date of March 27, that you had given your wife \$70,000 worth of bonds? A. Yes, sir.

Q. You did? A. That’s right. [49]

Q. Who did you tell, and where?

A. In a previous conference, prior to March 2,

(Testimony of Lawrence Santos.)

when I went to the mainland to try to get her to sell those bonds. I was told by Mr. Robertson to see what I could do about her selling those bonds.

Q. Do you recall the exact phraseology used in informing him that you had transferred these bonds to your wife? A. Phraseology?

Q. Yes. How did you tell him? Did you mention the \$70,000, or did you mention Government bonds? Tell us exactly what you told him.

A. I told him that my wife had these Government bonds, and that they belonged to her.

Q. Did you tell him how she got them? Did you tell Mr. Robertson how she got them?

A. No, he didn't ask me about that. He asked me if they were her bonds, and I said yes.

Q. Did you say you gave these bonds to her?

A. I told him that these were bonds that—well, the money that I had given my wife at different times previously.

Q. You told him at that time that you had given your wife \$70,000 worth of bonds?

A. That she had \$70,000. That is why, when [50] I answered your question——

Q. Let's be a little more precise, if we can, Mr. Santos.

Did you tell him at that conference of March, that you had given your wife \$70,000 worth of bonds?

A. I told him my wife owned \$70,000 worth of bonds, yes.

(Testimony of Lawrence Santos.)

Q. Did you tell him that you gave her those bonds?

A. I am not positive, at that time, whether I did or not.

Q. What is your best recollection on that?

Mr. Goodsill: I think he has given that. He says he doesn't remember.

Mr. Tonjes: He might have some recollection of it.

The Court: Let the witness answer the question.

The Witness: That is the answer.

Q. (By Mr. Tonjes): You don't know?

A. I don't remember.

Q. Now, in connection with the acquisition of these bonds, Mr. Santos, when you gave Mrs. Santos these bonds, did you receive any consideration at the time?

Mr. Goodsill: I object to the question, as asking for a legal conclusion.

The Court: The witness may answer if he knows [51] what the consideration was.

Mr. Tonjes: I will rephrase the question, your Honor.

Q. (By Mr. Tonjes): Did you give her anything at the time for the bonds?

The Court: Did she give him anything for the bonds?

Mr. Tonjes: Excuse me.

Q. (By Mr. Tonjes): Did she give you anything of value, at the time you transferred the bonds to her? A. Piece of mind.

(Testimony of Lawrence Santos.)

Q. Nothing of intrinsic value?

A. She laid off of me for a while, yes.

Q. Did you get any money?

A. I told you what I got.

Q. I am asking you whether you got any money?

A. I gave her money. She gave me money? No.

Q. Did you get any property of any kind,—real estate, jewelry, personal property, or anything?

A. No.

Q. So as you understand the word “consideration,” you did not receive any consideration, did you?

A. No, I don't think I received any consideration, as far as money is concerned, or jewelry. [52]

Q. Or anything of value?

A. Not what you consider——

Q. Intrinsic value.

A. Yes; I got a part of this obligation cleared away.

Q. What obligation was that?

A. The money that I owed her, that she contended all of the time for, from Persan's and Manufacturers Shoe Company, that was a bone of contention since 1944.

Q. Did you admit that she was entitled to anything? A. Yes.

Q. Why didn't you pay her?

A. I couldn't pay her. When we were getting started, we needed all of the capital in the business. That is why, when I gave her the \$52,500, I gave it to her in stock, not in cash.

(Testimony of Lawrence Santos.)

Q. You could have given her a little more stock at that time, too, to settle the obligation, couldn't you?

A. Why would I give her any more stock than I did at that time?

Q. I am asking the questions.

A. Because I still had control of the business. If I gave her much more stock, I wouldn't have the control of the business.

Q. You could have satisfied her demands at [53] that time, if you had wanted to? I am not asking where that would leave you. A. Possibly.

Q. You kept forty per cent of the stock, did you not? A. That's right.

Q. Now, you purchased these bonds at various times. Where did that money come from; was it on deposit in the bank?

A. I don't get the question—where the money came from?

Q. Yes.

A. From bonuses that I got, and from my salary, dividends.

Q. These were monies received from the Manufacturers Shoe Company?

A. That is correct, and from mortgages, or whatever finances I had, and they were paid up, and the money was turned over to me.

Q. You mean mortgages that you had had for some time? A. Yes.

Q. These were your private property?

(Testimony of Lawrence Santos.)

A. Not for some time, but the previous year, yes.

Q. And these were your own private property?

A. That is correct. Most of it was bonuses and dividends and salary. [54]

Q. You stated that Mrs. Santos went to California and sued you for separate maintenance; is that right?

A. That is right.

Q. She is now living here?

A. Yes, she is living here.

Q. Do you live together as husband and wife?

A. We live in the same house.

Q. Where was the first home you bought, Mr. Santos; in Honolulu?

A. Yes. Where was it?

Q. Yes.

A. On Liliha Street.

Q. And when did you buy it?

A. Approximately in 1932, I believe.

Q. And where did the money come from that bought that property?

A. From our joint earnings.

Q. And the title was taken jointly?

A. Yes.

Q. How much of the earnings was yours and how much was Mrs. Santos', if you know?

A. Mrs. Santos used to give me all of her money every month, and I used to run the business—I used to run the expenses, I guess you would call it.

Q. What would you say the ratio of your [55] earnings were, with respect to yours and hers, in the years prior to the time you bought this house?

A. Whatever she earned and turned over to me.

(Testimony of Lawrence Santos.)

Q. How much would you say she earned out of the total?

A. Well, whatever is in the tax return.

Q. How much did you pay for the house?

A. Either \$5,000 or \$5,500.

Q. How much did you pay down?

A. I really don't know. Maybe \$1,000. I don't know.

Q. Would you say that about \$750 was yours and \$250 was your wife's?

A. No, I would say about 50-50.

Q. How do you get at the 50-50 then? Did you earn equal amounts, prior to that time?

A. Fairly close.

Q. And that house was sold and the proceeds invested in another house and that continued right on through until you finally sold the houses in——

A. In 1950.

Q. Is that correct?

A. That is correct. That is the third house, yes.

Q. Was there any additional funds put into the acquisition of these other houses, or did they all follow from the original sale right on through?

A. We bought one, and we sold it. We bought [56] another, and when we sold that we bought another.

Q. Were there additional contributions of cash made in each one of those purchases?

A. Yes, we bought—the third house was more expensive than the first house.

Q. Who put up the additional cash?

(Testimony of Lawrence Santos.)

A. We would always make a mortgage; we would both sign the mortgage, and my wife paid—whatever she earned, she gave to me, and that was applied towards these mortgages.

Q. Did your wife work during all of these periods?

A. My wife worked up until 1941, yes, sir.

Q. Full-time employment?

A. Yes. In between times she had two children. She didn't work when she had the children.

Q. Did you borrow \$5,000 from your uncle for the purchase of one of these houses?

A. Yes, I did.

Q. That was your uncle? A. That's right.

Q. He gave you the money——

Q. (By Mr. Goodsill): To purchase a house?

A. No, for the purchase of Persan's stock.

Q. (By Mr. Tonjes): Not for the purchase of a house? A. No. [57]

Q. The \$5,000 you borrowed from your uncle then went to buy the Persan's stock? A. Yes.

Q. And that money was advanced on your credit, was it?

A. On the credit of my wife and myself. We both signed the notes to my uncle.

Q. Your uncle? A. Yes.

Q. (By the Court): Was that note paid back out of the proceeds of the business?

A. From our joint earnings.

Q. When you say that, was that from the profits

(Testimony of Lawrence Santos.)

from the business, or did it come out of your joint salaries?

A. I would draw \$250 from Persan's. That is all I would draw from the business. That would go in my checking account. My wife's checks would go in the checking account with mine, and from that we would pay the money to my uncle.

Q. She was still working? A. Yes, sir.

Q. (By Mr. Tonjes): The \$5,000 you say was invested in the stock of Persan's? [58]

A. In 1937, yes.

Q. Now, that stock was all issued in your name, was it not? A. That is correct.

Q. And all of the dividends were paid to you?

A. That is correct, if there were any dividends.

Q. And when Persan's—when was Persan's discontinued? A. I believe in 1942.

Q. 1942? A. 1942 or 1943.

Q. What happened to the assets of Persan's?

A. I transferred them over to the Manufacturers Shoe Store.

Q. The Manufacturers Shoe Store?

A. That's right.

Q. That was operated as an——

A. Individual.

Q. As an individual proprietorship?

A. Yes, sir.

Q. By you? A. Yes, sir.

Mr. Tonjes: I think that is all.

Mr. Goodsill: Nothing further.

The Court: Very well, you may stand aside.

(Witness excused.) [59]

The Court: Gentlemen, we will not be able to conclude this case before lunch time, will we?

Mr. Goodsill: I'm afraid not, your Honor.

The Court: Would you prefer to run awhile longer, or to recess now for lunch and come back, say, at 1:30?

Mr. Goodsill: I have Mrs. Santos here, and it will not take long, and I would like to put her on the stand.

The Court: You would like to put her on the stand now.

Mr. Goodsill: Yes, your Honor.

The Court: Very well.

IRMGARD SANTOS

was called as a witness by and on her own behalf and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Goodsill): You are Mrs. Irmgard Santos? A. Yes.

Q. Mrs. Santos, you were married to Lawrence Santos in 1928? A. Yes.

Q. I believe Mr. Santos stated, that at that time you were working for the Gas Company?

A. Yes, I was. [60]

Q. And you were making about \$125 a month?

A. Around that.

Q. Subsequently increased to about \$150?

A. When I stopped work it was \$165.

Q. You were working there until 1941?

(Testimony of Irmgard Santos.)

A. Yes.

Q. Mr. Santos testified that when Persan's Ltd. was started, a loan of \$5,000 was obtained, and you both signed a promissory note; is that correct?

A. Yes, we did.

Q. And you also signed a mortgage upon your house? A. Yes.

Q. And you signed a mortgage note too?

A. Yes.

Q. You worked at Persan's Ltd. a part of the time?

A. Yes, I would work up there after work and on Saturdays.

Q. When you worked there were you ever paid a salary? A. No.

Q. Were you ever paid anything with respect to the contributions you were making, or may have made to the business? A. No, I was not.

Q. When Mr. Santos created this limited partnership in 1944, did you object to the way the [61] transaction was set up? A. Yes, I did.

Q. Why?

A. Because I felt I had contributed money and time and I should have something.

Q. When he organized the corporation on March 1, 1947, did you have any objection to that?

A. Well, I did. I wanted to be in the business, too.

Q. He arranged to give you out of his stock, \$52,500 worth of stock in the company?

A. Yes.

(Testimony of Irmgard Santos.)

Q. Which was organized on March 1, 1947?

A. Yes, he did.

Q. Did that satisfy your demands for a share of the business?

A. No, I thought I should have more.

Q. You thought you should have more? Did you ask him for more? A. I did.

Q. What did he tell you?

A. He said that as he could afford it, he would give me more.

Q. (By the Court): How many shares of stock did that involve? I don't believe the record shows that.

A. That was \$10 a share. That would be 5,200.

Q. 5,250 shares?

A. About twenty per cent.

Q. (By Mr. Goodsill): \$10 per share?

A. Yes.

Q. That was supposed to represent your share in the earnings, at the time the community property started? A. Yes.

Q. That was supposed to represent your share in the community property earnings from June 1, 1941 to March 1, 1947?

Mr. Maiden: Your Honor, please,—

The Witness: From the time—

Mr. Maiden: Just a moment. I object to that, if the Court please. I think that is an improper question, and I think it calls for a conclusion with respect to an issue which is the sole prerogative of

(Testimony of Irmgard Santos.)

this Court to determine, the question calls for a legal conclusion.

Mr. Goodsill: I am just asking her what the stock she got was supposed to be in payment for.

Mr. Maiden: I beg your pardon. I have no objection on that point, because we have that in the stipulation, that the stock was given to her in consideration of her interest in the community income of the business on June 1, 1945, to March 1, 1947.

The Court: Very well. The witness has answered your question, has she? [63]

Mr. Goodsill: She answered the question, yes.

The Court: Very well.

Q. (By Mr. Goodsill): Now, the stipulation of facts in this case shows that Mr. Santos purchased cashiers' checks in the name of himself and yourself in 1948, 1949 and 1950, at various times. Do you know what he did with those checks?

A. He gave them to me as he purchased them.

Q. Totalling about \$81,000?

A. About that, yes, sir.

Q. Why did he give them to you?

A. Well, he said that was my part of the community property, that was part of what I should have from the sale of the houses and my part of the business.

Q. What did you do with these checks?

A. I kept them.

Q. Did he ever give you anything else that was supposed to represent your share of the business?

A. No.

(Testimony of Irmgard Santos.)

Q. Or your share of Persan's?

A. No, he didn't give me anything else.

Q. He didn't give you the stock?

A. Oh, yes, the stock.

Q. \$52,500? A. That is all. [64]

Q. You went to California in the fall of 1950?

A. Yes.

Q. Did you take these cashiers' checks with you?

A. I did.

Q. What happened with respect to the checks then?

A. Well, I just kept them up there.

Q. Was Mr. Santos here at that time?

A. Yes.

Q. Did you have any discussion with him about these bonds?

A. I didn't say I wanted to buy bonds, I said I would like to invest the checks and get some interest.

Q. And he suggested that you buy bonds?

A. He said he thought the best way to invest the money would be to buy Government bonds.

Q. And what happened then?

A. Well, I said that was all right, and I went down to Schwabacher & Frye's and bought the bonds.

Q. What did he do with the bonds?

A. He gave them to me.

Q. What did you do with them?

A. I kept them.

Q. (By the Court): But Mr. Santos made the purchase of the bonds for you? [65]

(Testimony of Irmgard Santos.)

A. He did.

Q. (By Mr. Goodsill): Were you relations with your husband friendly after 1944?

A. No, they were not.

Q. You finally brought an action for separate maintenance? A. Yes.

Q. In 1952? A. Yes.

Q. Mr. Santos has testified that in 1952 he asked you to sell these bonds and turn the money over for the payment of your taxes; is that correct? A. Yes, he did.

Q. Can you tell the Court what the substance of your conversation with him was?

Mr. Maiden: Now, if your Honor please, I object to that. I think Mr. Santos has already covered that, and it is wholly irrelevant and immaterial.

The Court: Well, I think it is pretty well covered, but I am going to overrule your objection at the time.

Q. (By Mr. Goodsill): Will you answer the question?

A. When he came up, he said that if I would sell the bonds that would pay my personal taxes. [66] So I said, well, I didn't know whether to believe him or not, I didn't know what it was all about; so when he came back to Honolulu, he called me twice, and he told me that Mr. Cades had had a conference with Mr. Santos, and they had said that if those bonds were sold that would completely clear me of my taxes.

(Testimony of Irmgard Santos.)

Q. You were willing to turn in the bonds to pay his taxes?

A. No, not to pay his but to pay mine.

Q. To pay your own? You were not going to pay his, but pay your own?

A. That is right.

Q. Who prepared your 1952 tax return?

A. The attorney I had in California.

Q. Who was that? A. Mr. Rogers.

Q. And in that return you made no—claimed no loss on account of the sale of these bonds in 1952?

A. I didn't know what they were worth, or anything, and he prepared the taxes for me and I signed it, and I put myself in a jam.

Q. He didn't know anything about these bonds you sold?

A. He knew that the bonds had been sold.

Q. Mr. Rogers did?

A. Mr. Rogers did, but he didn't put it down [67] in the return; the tax return didn't even mention it. As a matter of fact, I thought the bonds were not taxable.

Q. Were not taxable—even the sale of them?

A. I didn't know.

Mr. Goodsill: No further questions.

Cross Examination

Q. (By Mr. Maiden): Mrs. Santos, you testified that you were not on friendly relations with Mr. Santos after about 1950?

(Testimony of Irmgard Santos.)

Mr. Goodsill: 1944.

The Witness: I said in 1944.

Q. (By Mr. Maiden): Did you live with him in 1944 as his wife, up until you went to California?

A. That is right. We were living together as man and wife, but we were not especially getting along.

Q. Were you fighting all that time?

A. Most of the time, fussing, fussing about the money.

Q. Aren't you and Mr. Santos on very good terms right now? A. At times.

Q. Now, Mrs. Santos, do I understand you to represent here to this Court, under oath, that you always maintained that you had an interest in this Persan's, Ltd., and that you had an interest in the [68] Manufacturers Shoe Company, while it was operated as a sole proprietorship, until until—and that you likewise retain an interest in it after Mr. Santos created the partnership of the business between him and the trust for his children?

A. That was when I said that I was being left out of it. The trust fund did not provide for me, and I had given my money and my time to the business.

Q. In other words, you are telling the Court that you maintain, up through 1952, that you had an interest coming to you out of that partnership and out of the sole proprietorship before the partnership? A. That I had an interest?

Q. Yes.

(Testimony of Irmgard Santos.)

A. That I claimed I had an interest?

Q. You claimed you had an interest, and you always claimed that?

A. I have always claimed it.

Q. And you now claim it? A. I do.

Q. Mrs. Santos, I hand you here what purports to be a copy of a letter on the stationery of the Manufacturers Shoe Store, dated January 5, 1950, addressed to the Internal Revenue Agent in Charge, Post Office Box 421, Honolulu, Territory of Hawaii, and will ask you if that is your signature? [69]

A. That is my signature.

Q. I will ask you if you swore to that?

A. That is my signature.

Q. "Mrs. Irmgard Santos, being duly sworn, says that she has read the foregoing protest, and is familiar with the statement of facts contained therein, and that the facts stated are true."

And you signed that before a notary public?

A. Yes.

Q. Now, Mrs. Santos, I call your attention—I want to read this, your Honor, because it is very brief.

"Under date of November 30, 1949, you mailed to me, Mrs. Irmgard Santos, 1051 Fourth Street, Honolulu, Territory of Hawaii, a copy of your report covering your examination of my income tax return for the calendar years 1946 and 1947, and in your report, you propose to recommend the assessment of income tax deficiencies of \$34,372.73 and \$77,395.95, respectively, for said years.

(Testimony of Irmgard Santos.)

“To your findings I take the following exceptions: You erred in determining that my share of the community income for the calendar years 1946 and 1947 were understated by \$42,353.38 and \$95,814.35, respectively, for said years. The question of whether or not my income was understated for the calendar years 1946 and 1947, depends [70] upon the correct determination of the amount of income earned by the partnership, Manufacturers Shoe Store, for its fiscal years ended February 28, 1946, and 1947, and the correct determination of the amount of income taxable to my husband, Lawrence Santos, a partner.

“Since my interest in the income of the partnership is only my community property interest in my husband’s share of the partnership income, since the issue of whether or not the partnership, Manufacturers Shoe Store, was a bona fide partnership for income tax purposes, and Lawrence Santos Trust, Hamilton Trust Company, Ltd., Trustee, a bona fide partner thereof, since Manufacturers Shoe Store and my husband have both filed protests against your proposed findings, and since the settlement of the issues in dispute in their protest will determine the answer to the exceptions taken by me no brief is being prepared by me except to incorporate herein by reference the facts and arguments contained in the protest filed on behalf of Manufacturers Shoe Store and by my husband.”

Now, Mrs. Santos, you stated in this protest that

(Testimony of Irmgard Santos.)

the only interest you had in that partnership was your community interest. Now, how do you——

Mr. Goodsill: Just a second. I object, your [71] Honor. I haven't heard that before but it seems to me, from the reading of it, that it relates to the partnership years 1946 and 1947. What she is talking about is her interest prior to the organization of the corporation.

The Court: This is cross examination, Mr. Goodsill. You can cover it in your brief and in your redirect examination.

Q. (By Mr. Maiden): Now, Mrs. Santos, why would you make a sworn statement that "since my interest in the income of the partnership is only my community property interest in my husband's share of the partnership income"—why did you make that statement, if you claimed that you had any right to share in the income?

A. Isn't community property—isn't that your right to a share?

Q. Mrs. Santos, I think you have already testified that, when this company was incorporated on March 1, 1947,—and pursuant to your demand an audit was made of the earnings of this business during the time the community property was in effect, from June 1, 1945, up to March 1, 1947, that you, at that time, received stock representing your interest?

A. Yes.

Q. Now, you never considered—you certainly didn't consider, at the time you signed this sworn

(Testimony of Irmgard Santos.)

statement, that you had any other interest in that business, did you? [72]

A. Any other interest?

Q. Yes, than your community property interest?

Mr. Goodsill: She has already testified——

Mr. Maiden: Just a moment, counsel, just a moment!

The Court: Let the witness testify, Mr. Goodsill.

Mr. Maiden: Will you read the question, Mr. Reporter?

(Thereupon, the Reporter read the pending question.)

The Witness: I don't know what you mean. My community property interest was in the business, and my share of the stock. Then I also told you that my husband was giving me the cashiers' checks as a part of my community property, and a part of my interest in the houses in Honolulu.

Q. (By Mr. Maiden): And that is all?

A. That is all.

Q. Now, Mrs. Santos, I want to ask you, is Mr. Santos a pretty good provider?

A. Was he a good provider?

Q. Was he a good provider?

A. Yes, he is a good provider.

Q. I will ask you if Mr. Santos did not maintain you and the family on a standard of living, during the tax years, commensurate with the income he was making? A. Yes, he did. [73]

Q. How many children do you have, Mrs. Santos? A. I have two children.

(Testimony of Irmgard Santos.)

Q. What are their ages? A. 18 and 20.

Q. 18 and 20. Are they married or single?

A. They are both single now.

Q. Didn't you have one or more daughters in a college on the mainland, during 1950 or 1951 or prior to that? A. My daughter was in school.

Q. In school?

A. In 1950 and 1951, she graduated in 1952.

Q. Where did she graduate from, Madam?

A. Castellaya.

Q. Where is that?

A. In Palo Alto, California.

Q. Is that a girls' college?

A. It is a girls' school, it is not a college.

Q. What about the other young lady?

A. I have a son.

Q. A son? What about the boy?

A. He is going to school in San Francisco, and he is living with my mother.

Q. How long has he been there, Mrs. Santos?

A. How long has he been there?

Q. Yes.

A. He has been going to school right in [74] San Francisco for just one year.

Q. Now, Mrs. Santos, when you—when was it that you stated that you left Mr. Santos?

A. I left in August.

Q. Of what year? A. Of 1951.

Q. In August of 1951, you went to the mainland? A. Yes, I did.

(Testimony of Irmgard Santos.)

Q. Where did you get your money to travel onto the mainland?

A. Mr. Santos paid my passage. I was taking the children to school—or, rather, my child.

Q. And he gave you money for you and the children to go to the mainland?

A. The child. I just took one.

Q. And he maintained you and the child while you were in California?

A. No, I was living with my mother while I was in California.

Q. You were living with your mother?

A. My mother and my sister.

Q. Did he furnish you the support and maintenance of the child on the mainland?

A. He paid for the child's school, and he did give me money, but he didn't feel that he could afford to have me take an apartment and still pay for the child's schooling. [75]

Q. In other words, Mr. Santos kept you in such good care—and I don't blame him after seeing you, Mrs. Santos, you didn't find it necessary to use any of these cashiers' checks, in order to get along and pay bills with?

A. I certainly wouldn't have any bills for the amount of the cashiers' checks.

Q. In other words, I take it that the fact that you did not cash them would indicate that you were not in any dire extremities or necessities?

A. No, I was not.

(Testimony of Irmgard Santos.)

Q. You were well maintained, were you not, Mrs. Santos? A. I was very comfortable.

Q. Now, Mrs. Santos, how many automobiles did you and Mr. Santos own during these years?

A. What years?

Q. Well, from 1941 or 1942, on?

A. 1941, I would say that——

Q. I will shorten it up, Mrs. Santos, and will ask you if it isn't a fact that, at the time you filed your separate maintenance complaint in 1952, you did not allege in that "the community property consisted of the stock of the Manufacturers Shoe Store Corporation held as follows: 40 per cent in the name of the defendant, Lawrence Santos, 20 per cent in the name of the plaintiff, Irmgard Santos, 20 per cent in the name of June Santos, the minor [76] daughter of the complainant and 20 per cent in the name of Bruce Lawrence Santos, son of the parties hereto."

Now, you list the household furniture in the home of the parties, in the City of Honolulu, Territory of Hawaii, of the approximate value of \$50,000; a 1950 Cadillac Sedan automobile, California license issued to the Manufacturers Shoe Store, No. 1 E 33857; one 1950 Oldsmobile Sedan type automobile, registered in Honolulu in the name of the plaintiff; one 1950 Oldsmobile Convertible automobile, registered in Honolulu in the name of the defendant, Lawrence Santos.

Now, Mrs. Santos, would you say that—would

(Testimony of Irmgard Santos.)

you characterize that as indicative of the manner in which Mr. Santos maintained his family?

A. We did have a car on the Coast because he used that for traveling down to Los Angeles, where my daughter was in school at that time.

Q. And when you were on the Coast you used that automobile?

A. Yes, I did use that automobile.

Q. Now, Mrs. Santos, would you characterize Mr. Santos as being very liberal and lavish spender?

A. You mean with his family? Is that what you mean?

Q. Yes, Mr. Santos, on himself, or his family, or both. [77]

A. Well, I guess he does like to spend.

Q. Now, Mrs. Santos, do I understand here—correct me if I am mistaken—that you testified that the only reason you had a falling out with your husband and filed this divorce complaint against him was because he didn't give you what you thought you had coming out of the business?

A. That was part of it.

Q. Was that the main reason, Mrs. Santos?

A. The other reason was that he was very upset during this time, and he did start drinking and gambling, and that worried me quite a bit.

Q. Did you believe he was losing money gambling?

A. I didn't know, but I was afraid he would.

Mr. Maiden: If your Honor please, I do want

(Testimony of Irmgard Santos.)

to offer in evidence, as Respondent's exhibit next in order, Mr. Clerk, the letter of January 9, 1950, which I read into the record.

Mr. Goodsill: May I look at it?

Mr. Maiden: Your Honor, I wonder if I might withdraw it and have a copy made for myself and Mr. Goodsill?

I will see that the Clerk gets it.

The Court: There being no objection, Respondent's Exhibit Q is received in evidence, leave given to withdraw the original and substitute a photostatic copy, or typed copy. [78]

Mr. Maiden: Your Honor, that is a short document, and I am going to let that one stay in, and simply make a copy for Mr. Goodsill and myself.

The Court: All right.

(Respondent's Exhibit Q was thereupon received in evidence.)

Q. (By Mr. Maiden): Just one other thing, Mrs. Santos: I don't want to appear to be insistent, but I want to clear up one thing.

As I understand it you were raising Cain with Mr. Santos about not giving you your interest in the business, as a result of which the auditors made an audit of the books, and determined the community earnings, and you were given stock in the value of your community interest. Why did you accept that if it was not agreeable?

A. The auditors had audited the books, and they said that I was entitled to that amount of money, because of the community property law, that

(Testimony of Irmgard Santos.)

amount of stock. That was my community right in the business.

Q. And you had every confidence in those auditors? A. Yes.

Q. And did you tell the auditors, "Well, now, wait just a minute. I want some more stock here. I have got some more interest in that thing." Did you tell them that?

A. I didn't tell them that. [79]

Q. Mrs. Santos, you say Mr. Santos,—the understanding was that he was giving you those cashiers' checks for some additional interest that you had in the business?

A. He said it was still a part of my interest in the business, it was a part of my money from the Halelea Place house.

Q. When did you sell the Halelea Place house?

A. About in April of 1950.

Q. I believe you did purchase one cashiers' check in 1950. I think the other checks, Mrs. Santos, were issued prior to that time.

A. Prior to 1950.

Q. Yes.

Mr. Goodsill: Excuse me. One in August, 1950 and one in September, 1950.

Mr. Maiden: Yes.

Mr. Goodsill: Two in 1949 and four in 1948.

Q. (By Mr. Maiden): Did you, at that time, have it occur to you as being sort of strange, that Mr. Santos was giving you something for your own;

(Testimony of Irmgard Santos.)

that those cashiers' checks had been made out in his name as well as your own? A. No.

Q. Did you ask him about that.

A. No. I just thought if it was made out in [80] both of our names, if anything happened to both of us—if anything happened to one of us, the other would get it.

Q. As a matter of fact, that is the only reason why your name appears on those checks, wasn't it, was in case Mr. Santos died?

A. No, I don't think that.

Q. But you didn't feel like there was any Indian gift in that situation, did you?

A. Indian gift, you say?

Q. Yes.

A. You mean that he was going to take it back?

Q. Yes. A. No.

Q. Why did you consult Mr. Santos about what you would do with your money?

A. Because I have never handled transactions like that.

Q. You had lawyers over there, and other people. Why didn't you talk to them?

A. At that time, when we bought the bonds, I didn't have a lawyer then. I didn't have a lawyer until October.

Q. Mrs. Santos, isn't it a fact that you felt like you had to get Mr. Santos' approval, before you could use any of them? Now, isn't that a fact?

A. No, I don't think I had to get his approval. [81] I didn't know enough about stocks and bonds,

(Testimony of Irmgard Santos.)

and I asked him what would be the best way to invest it.

Q. I am just wondering why you would take up such a conversation with a husband that you had left, and was going to divorce?

A. I didn't know at that time I was going to get a separate maintenance from him. I didn't decide that until October.

Q. I see. I believe that is all. Just a moment.

The Court: We will recess until 2:00 o'clock, gentlemen.

(Thereupon, the hearing was recessed for luncheon, to reconvene at 2:00 o'clock p.m. of the same day.)

Afternoon Session

(The hearing was resumed at 2:00 o'clock p.m. pursuant to the taking of the noon recess.)

The Court: Well, gentlemen, you may proceed.

IRMGARD SANTOS

the petitioner, resumed the witness stand for further examination.

Mr. Goodsill: Any further questions?

Mr. Maiden: No further cross examination.

Mr. Goodsill: I have several questions, your Honor.

The Court: Very well, you may proceed. [82]

Redirect Examination

Q. (By Mr. Goodsill): Mrs. Santos, you, as I understand it, left your husband and went to the mainland in August, 1952? A. Yes.

(Testimony of Irmgard Santos.)

Q. You went there to live? A. Yes.

Q. And you lived there until——

A. I lived there until December.

Q. And during the time that you were there, did he give you any money?

A. At that time he didn't support me at all.

Q. How did you live? A. I went to work.

Q. Where did you work?

A. I worked at Lee-Cardé Dress Shop from September, 1952, until September, 1953, and then I worked with the United Air Lines from September, 1953, until December, 1953.

Q. Did Mr. Santos give you any money, for your own support during that time?

A. No, he did not.

Q. These cashiers' checks, which there has been testimony about, as I understand it they were made out in the name of Lawrence Santos and/or Irmgard Santos; is that correct? [83]

A. Yes, sir.

Q. Either one of you could have cashed them?

A. Yes, we could.

Q. Is it your understanding that you could have taken them, yourself, and cashed them?

A. Yes, I could have.

Q. Without his signature? A. Yes.

Q. When you received this \$52,500 worth of stock in the company, you have stated before that you were not satisfied that that represented the entire amount of your interest? A. Yes.

Q. And you made further complaints to your

(Testimony of Irmgard Santos.)

husband? A. Yes, I did.

Q. Did you ever see the auditors on this matter?

A. No, I didn't see the auditors.

Mr. Goodsill: That is all.

Mr. Maiden: No questions, if the Court please.

The Court: Very well, you may stand aside.

(Witness excused.)

Mr. Goodsill: Mr. Dunn will be the next witness.

HERBERT C. DUNN

was called as a witness for and on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows: [84]

The Clerk: Tell us your name, please, Mr. Witness.

The Witness: Herbert C. Dunn.

Direct Examination

Q. (By Mr. Goodsill): Mr. Dunn, you are a resident of Honolulu? A. I am.

Q. What is your profession?

A. Certified Public Accountant.

Q. You are a member of the firm of Cameron, Tenne and Dunn? A. I am.

Q. Did you prepare Mr. Santos' tax return in 1952?

A. It was prepared in our office, either by me directly or under my supervision.

Q. You are familiar with the contents of the return? A. Yes.

Q. Could you tell the Court the circumstances

(Testimony of Herbert C. Dunn.)

surrounding the preparation and the filing of the return for the year 1952?

A. We had to get an extension of time in preparing the 1952 return, because the properties had been turned over to the Government and sold, we had to get proceeds from the sale of it; and at the same time, we knew that Mrs. Santos was on the mainland, and we suggested—we wrote her, [85] suggesting that she give someone in Honolulu a power of attorney, so we could prepare the return and have it filed. However, a power of attorney was not signed by her, and was returned to us by her attorney by the name of Rogers, stating that he had taken this up with Mrs. Santos and she refused to sign it.

Q. She refused to give anybody power of attorney?

A. Yes, sir. We completed the tax return, and then forwarded the tax return to Mr. Rogers.

Q. This was a joint return?

A. Joint return of husband and wife, and forwarded it to Mr. Rogers, suggesting that he look it over and have the taxpayer, Mrs. Santos, sign it and return it to us for filing.

That return was not signed, was not returned to us. Mr. Rogers wrote to us and said under the circumstances he could not advise his client to sign it.

Q. He was advising his client not to sign the return?

A. That is right.

(Testimony of Herbert C. Dunn.)

Q. Was there anything in the joint return about the sale of Government bonds?

A. There was.

Q. What was that? You are looking now at a copy of the return?

A. Yes, I think it is in evidence. [86]

Q. I believe it is in evidence, yes, the 1952 return.

Mr. Maiden: I think he should refer to the exhibit number so we will know what we are talking about.

Mr. Goodsill: Respondent's Exhibit——

The Court: Mr. Clerk, can you get the 1952 return out?

Mr. Goodsill: We are talking about the 1952 return.

Mr. Tonjes: Is that the one designated as Revised?

Mr. Goodsill: No; as a matter of fact, I think this one is not in evidence; it was never filed. She refused to sign it.

Q. (By Mr. Goodsill): So you are looking at a return there, your copy of the joint return that you prepared and sent to Mr. Rogers?

A. That is right.

Q. What report, if any, was made with respect to the sale of bonds? A. In the——

Mr. Tonjes: Objected to as immaterial, your Honor, if it was never filed.

The Court: I can't see how it is material in

(Testimony of Herbert C. Dunn.)

this case at the present time, Mr. Tonjes. However, I will permit the witness to answer the question.

Mr. Goodsill: I think it will become material.

The Court: You may connect it up, if you can.

The Witness: In the schedule that is attached and is a part of the tax return, the schedule is known as Capital Gains Schedule, in which are listed the sales of the capital assets, and in there is reported two sales, one sale of \$70,000 U. S. Treasury bonds, two and one-half per cent, of the 1967 Series, sold on September 12, 1952, for \$68,-287.90, and also the sale of \$10,000 U. S. Treasury bonds on April 1, 1952, for \$9,739.83.

Q. (By Mr. Goodsill): The sale of the \$70,000 showed a loss?

A. There was a loss of \$1,244.90 sustained on the sale of the \$80,000 par value United States bonds.

Q. Mr. Rogers refused to have his client sign this, and he wrote you to that effect? A. Yes.

Q. What did you do then?

A. We prepared a separate return for Mr. Santos, had him sign it and file it.

Q. What statement was made in there about the sale of the bonds?

A. The same statement—the same bonds were reported.

Q. The same statement as in the previous joint return? A. Yes.

Mr. Goodsill: This (indicating) now, I believe is an exhibit. [88]

(Testimony of Herbert C. Dunn.)

The Witness: Have you the photostat of that return there?

Mr. Goodsill: I am looking. I think we do.

This is Respondent's Exhibit O, the individual return for Lawrence Santos for the year 1952.

Q. (By the Court): Is that the return which you prepared, Mr. Dunn?

A. I didn't prepare it, but it was prepared in our office.

Q. I mean under your supervision?

A. That's right. In the separate return of Mr. Santos, the schedule under Capital Gains was identical with the one in the joint return, except the name is referred to there as the taxpayer, Lawrence Santos, instead of the joint names of Lawrence Santos and Irmgard Santos.

Q. (By Mr. Goodsill): The same schedule?

A. The same schedule.

Q. Can you explain why his individual return reports the loss from the sale of these bonds, which he has claimed were his wife's bonds?

A. We had no knowledge that those bonds were not his, or not owned jointly, or that they were in her name. If I asked the taxpayer—I don't recall [89] asking the taxpayer specifically whether those were his bonds, or her bonds. In obtaining the cost of those bonds, we got that from Schwabacher-Frye statement, which shows a cost of \$80,000 bonds, that account was in the name of Lawrence Santos.

Q. That shows that—the Schwabacher statement shows that he purchased them?

(Testimony of Herbert C. Dunn.)

A. Yes. We probably assumed that those were his. The question, so far as I recall, never came up, and never was denied or admitted, particularly by the taxpayer. Probably that was a failure on my part.

Q. After the joint return came back, you made out the individual return and didn't specifically check that? A. That is correct.

Q. Then subsequent to the filing of the individual return, you filed the revised joint return of Lawrence Santos and Irmgard Santos?

A. No. I am sorry.

Q. Respondent's Exhibit P is the revised joint return of Lawrence and Irmgard Santos, which I believe was filed subsequently, filed in 1954?

A. That is right. At the time we prepared the 1953 return, Mrs. Santos was in Honolulu.

Q. At the time she signed the joint return?

A. That's right, then we prepared the joint return on very much the same basis as it had originally been filed. [90]

Q. The final return for 1952 is a joint return?

A. That is right.

Q. With the same schedule of Capital Gains and Losses, except the title is now Lawrence and Irmgard? A. That is right.

Mr. Goodsill: No further questions.

Cross Examination

Q. (By Mr. Maiden): Mr. Dunn, there was not any significance, so far as the reporting of the sale

(Testimony of Herbert C. Dunn.)

of these Government bonds, in the preparing of the joint return to be signed by Mr. and Mrs. Santos, was it? There was not any significance in the fact that you first prepared a joint return, insofar as the bonds were concerned?

A. No, sir.

Q. You assumed that those bonds belonged to Mr. Santos? A. That's right.

Q. I assume that, when you prepare a return for a taxpayer, you go over that return with the taxpayer to be sure he understands it?

A. Well, I am afraid I couldn't answer in the affirmative on that.

Q. What is your practice, Mr. Dunn, when you prepare returns for taxpayers?

A. Well, I don't try to explain the return to [91] them; I gave up on that, explaining returns to taxpayers. I'm afraid I would fall far short on that. A taxpayer has a right to go over his return and do go over their returns and we change them lots of times, because we have errors in them, but the returns are made from information submitted to us by the taxpayer, and if we have no reason to believe they are wrong, we use that information in the return.

I wouldn't make it a point to go down, item by item, and say, "Have I done this right?"

Q. Well, did you present the return to Mr. Santos, to have him sign it? A. Surely.

Q. Did Mr. Santos look over the return?

A. I couldn't answer that.

(Testimony of Herbert C. Dunn.)

Q. Well, since you prepared the return on the basis of the information given you by Mr. Santos,—Mr. Santos told you about these bonds, the sale of them in 1952? A. That's right.

Q. Now, you spoke about subsequently filing the revised 1952 joint return, which I believe you testified, at that time, Mrs. Santos was willing to sign the joint return.

I will ask you if this isn't the fact, Mr. Dunn: That the purpose of filing the revised return, under a special provision, I believe, sir, of the Internal Revenue Code then in effect,—if the purpose was [92] not to gain additional tax benefit?

A. Surely.

Mr. Maiden: That is all.

Mr. Goodsill: No further questions.

The Court: Very well, you may stand aside.

(Witness excused.)

Mr. Goodsill: Mr. Cades.

MILTON CADES

was called as a witness for and on behalf of the petitioner and, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, Mr. Witness, please.

The Witness: Milton Cades.

Direct Examination

Q. (By Mr. Goodsill): Mr. Cades, you are a resident of Honolulu? A. I am.

(Testimony of Milton Cades.)

Q. What is your profession?

A. Attorney-at-law.

Q. You are a member of Smith, Wild, Beebe and Cades? A. I am.

Q. Were you employed as counsel for Mr. and Mrs. Santos in connection with their tax problems?

A. I was, yes.

Q. When did this employment start? [93]

A. I believe the employment started on January 15, 1952.

Q. What were the circumstances under which you were employed?

A. Mr. H. W. B. White, the Vice-president of the Hawaiian Trust Company, requested us to represent the taxpayer in this particular case, that is, Lawrence and Irmgard Santos, because the Government had issued a distraint order and had advertised for sale the stock of the Manufacturers Shoe Company that was owned by the two of them.

Hawaiian Trust, as trustee of the trust created for the benefit of the children of the Santos, owned the other stock.

Q. Hawaiian Trust Company owned forty per cent?

A. Forty per cent, and the Trust Company was interested in seeing that the control of the stock was not put on the market and possibly destroy the trust's investment in the business, and it was on that basis that we agreed—Mr. Beebe, one of my partners, was in the conference with Mr. White. We

(Testimony of Milton Cades.)

consulted our other partners, and we agreed to accept the engagement.

Q. Now, then, at that time, the Government was threatening to put up for sale the stock in the Manufacturers Shoe Company owned by Mr. and Mrs. Santos?

A. Yes. My time sheet shows that the same day we [94] started——

Mr. Maiden: Wait just a minute. If the Court please,—excuse me, Mr. Cades,—your Honor, please, I object to the use of the words by Mr. Cades of threatening. The Government doesn't threaten anybody, and I move that that be stricken from the answer.

The Court: Well, I think the Court understands the witness, and I advise counsel for the petitioner to watch his adjectives and adverbs, and so forth.

Q. (By Mr. Goodsill): The Government proposed to sell them?

A. The same day that we were engaged, we requested Mr. Shoddy, an associate in our office, to do some legal research on the right of the taxpayer to enjoin the levy and sale under award of distraint, issued pursuant to jeopardy assessment, prior to a 90-day letter.

Q. The purpose of this was to prepare possibly to enjoin the Government from carrying out the proposed sale?

A. That is correct. As the first step in discussing the matter with the Government we wanted to know what the rights of the taxpayer were.

(Testimony of Milton Cades.)

Q. Did you have some conferences with officials in the Bureau?

A. The next day, the 16th, we had a conference, Mr. Beebe of our office, Mr. Santos, Mr. Dunn, Mr. Robertson, [95] Mr. Chun, Mr. Tonjes were all present,—at which time I informed them of the legal research that we were conducting, and requested that the sale be delayed until such time as it was determined whether there was any tax liability, at all, of the taxpayer.

Q. Did you discuss any agreement with respect to the operation of the shoe store, or the sale or non-sale of the stock?

A. Yes, we did. Immediately, our discussion got into the question of the terms under which the Government would be willing to postpone the sale, and it had to do, primarily, with what monies could be immediately paid, and what protection the Government would have over the business, to see that it was not—that funds were not taken that might otherwise go in payment of taxes.

Q. The Government was asking questions about the assets that were available for the payment of taxes?

A. That is correct, and I recognized, of course, that in asking the Government to give up any rights to immediate sale of the property, that the Government had to be secured, to be sure that they would not lose any of their rights to collect.

Q. Did this question involve property owned by Mrs. Santos, as well as Mr. Santos?

(Testimony of Milton Cades.)

A. Yes, it did. We were discussing all of the [96] property owned by both taxpayers.

Q. Were you discussing her tax liability as well as his?

A. Yes. I was retained by her, and had a power of attorney to represent her.

Q. Were there subsequent conferences to the one you have mentioned?

A. My records show that after the 16th, I telephoned Mr. Tonjes and——

Q. The 16th of January?

A. That is on the 18th of January. On the 22nd of January, I telephoned Mr. Robertson. On the 22nd, we completed a draft of a complaint in an injunction action to restrain the sale of the stock; and on the 23rd, we had a conference, at which the draft was shown to the Government representatives, to show that we felt that we had a right to enjoin the sale. It was an attempt to make them realize that we would not permit the sale of the stock to go on before a determination of the tax liability, if we could avoid it, and that conference was attended by Mr. Beebe, Mr. Santos, Mr. Condon, who is a partner in Cameron, Tenne & Dunn, Mr. Dunn, Mr. Tonjes, Mr. Robertson, Mr. Alsup, who was the Collector at that time, and Mr. Chun.

Q. What was the result of that conference? [97]

A. As a result of that conference, it was suggested that we get together with the Agent in Charge of the office, to see if we could work out some compromise of the tax liability, so that, if it

(Testimony of Milton Cades.)

were determined exactly what the liability was, we could then make some agreement to settle the amount of the tax liability.

Q. Then you made an effort, and did you get together with the Agent's office?

A. The next day, the 24th of January, Mr. Santos, Mr. Dunn and myself, had a conference with Mr. Jansen, at which we explored the possibility.

Q. What was the result of that conference?

A. The result of the conference was that I believe that Mr. Jansen was going to let us know whether anything could be done. He expressed great doubt as to whether the collection end had anything to do with the assessing and of the service.

Q. What was the final result of that effort?

A. Well, on the 30th, we had another conference, with Mr. Jansen, at which that was confirmed. At that time, we agreed that there was nothing that could be done at that time to determine the liability.

In the meantime, on the 28th, we had been requested to submit to the Collector a proposal, setting out what we would do, what we could offer by way of payments and what [98] other commitments we could make, in order to get the Government to hold up the sale of the stock.

Q. They had requested you to submit a proposal?

A. That is correct, and I telephoned Mr. Robertson when it was ready, and the next day we met, on the 29th, at which time we presented the proposal.

Present at that conference was Mr. Santos, Mr.

(Testimony of Milton Cades.)

Robertson, Mr. Tonjes, Mr. Dunn, and Mr. Alsup.

Q. Did that proposal contain anything about Mrs. Santos' property?

A. As I remember—and I have a number of drafts—all of these agreements had to do with the payment of certain monies to the Government and where the funds would be obtained.

They also had commitments on the part of Mr. Santos to turn over to the Government his stock in the Manufacturers Shoe Company, and other securities that he had, and to try to procure from Mrs. Santos, and turn over to the Government, her securities.

Q. Was Mrs. Santos to be a party to the agreement?

A. She was to be a party to the agreement, and there was a provision for her agreement.

Q. Then it contained the provision that she was to turn over her property also?

A. That is correct. Somewhere in our discussions, [99] it became apparent that *Mr.* Santos was not going to go along with this, and the tenor of the drafts changed, as I reviewed them, to Mr. Santos' undertaking to try to get the securities.

Q. It became apparent that she would not——

A. That she was not satisfied to turn over her securities to the Government.

Q. She was asked to turn over her securities on his obligation?

A. Well, for their joint obligation, or for the total obligation.

(Testimony of Milton Cades.)

Q. And there were further conferences concerning this agreement?

A. Yes. The Government re-drafted our agreement, and suggested certain changes, and on February 4th, I re-drafted again the letter of proposal and delivered it to Mr. Robinson.

On the 5th I telephoned both Mr. Robinson and Mr. Tonjes about the agreement and on the 6th, again, and at that time, somewhere around that time it was acceptable, and——

Q. The agreement in final form was acceptable in February?

A. Some time around that date, in early February, and it provided, as I recall, that Mr. Santos was to settle [100] his mother's estate as quickly as possible, and turn over the assets of that estate to the Government. He was also to see Mrs. Santos about——

Q. Who was then in California?

A. Who was then in California, and to see what he could do about getting her securities turned over to the Government; and also the question came up of the bonds which were in her possession.

Q. When did this question first come up?

A. That question came up—my memory is that it came up before Mr. Santos went to the Coast. That was one of the things that he was going to do, was to get that money.

Q. He testified that he went to the Coast, I think, about March 3rd or March 4th, or there-

(Testimony of Milton Cades.)

abouts. Your memory is that the question of the bonds came up before that time?

A. Yes, that is correct. I have it here on—on the 15th I telephoned Mr. Robinson.

Q. The 15th of March?

A. Of February, which was, I believe, an inquiry as to what progress Mr. Santos was making, and at which time he told me of his plans for going to the Coast.

Q. You told Mr. Robinson that Mr. Santos intended to go to the Coast, to try to get these bonds?

A. That is right. As a matter of fact, it is my memory that the Government was quite anxious to have him [101] go up there, because his mother's estate could not be settled until he went up there, there were certain matters that he had to discuss with the attorney for the estate.

Q. Following the February 15th conference, did you have another conference?

A. The next I have is on March 25th, at which time I telephoned Mr. Tonjes.

Mr. Santos had returned, and had said that Mrs. Santos was unwilling to turn over the stock, or any of her money, except in payment of her own tax liability.

Q. She was not willing to turn over the bonds?

A. She was not going to turn over any money, which had to do with the bonds, except in payment of her own liability.

Q. You told that to Mr. Robinson?

A. That was told to Mr. Tonjes, and at that

(Testimony of Milton Cades.)

time, the matter was discussed as to whether the Government would accept the payment for her liability and release her from the lien.

Q. What time was this? What date was this?

A. That was in March, about the 25th.

Q. About the 25th of March? A. Yes.

Q. And what was the result of that? Was there an understanding, at that time? [102]

A. There was an understanding and that was a computation as to how much would be required, and it is a little complicated, but possibly I can explain it this way:

The original jeopardy assessments were for approximately \$190,000 against Mrs. Santos. Within 60 days after the jeopardy assessment, a 150-day letter was issued, a real deficiency, in which there was a shift of years for which the tax liability was determined, that arose by reason of disallowing the partnership, which was on a fiscal basis, as a bona fide partnership, and converting all of the income to the calendar year basis, on the theory that it was still Mr. Santos' business, and he had no right to convert to the fiscal year basis. The result was that the liability was shifted from year to year, and although the total liability was approximately the same, the liability for the years which were under lien required the payment of approximately \$68,000 to satisfy the lien.

Now, those figures were worked out with Mr. Robinson. The figures were given to us, and we were told exactly how much money Mrs. Santos would

(Testimony of Milton Cades.)

have to pay to discharge the lien for her taxes.

Q. And it turned out that she would have to pay about \$68,000?

A. Yes, that is right. That is the figure that was [103] given.

Q. And that was about the 25th of March?

A. That was about the 25th of March.

Q. Then do you know what happened on the 26th of March?

A. On the 26th of March, I had a conference with Mr. Santos, who informed me that he had spoken to his wife, that she wanted my assurance that if this money was paid, it would be in discharge of her liability; and that if it were determined that she did not owe any money, she would get that money back.

Q. It was thought at that time that she would file a claim for refund?

A. It was thought of, yes, and was spoken of.

Q. The possibility that she would get something back?

A. That's right.

Q. Her understanding, as far as you know, was that if she got something back, she would be able to keep it?

A. That is correct.

Q. Was there a conference subsequent to that?

A. On March 27, I attended a conference at which, in accordance with the agreement that had been made previously, Mr. Santos agreed to subject himself, under oath, to examination as to the financial condition of himself [104] and Mrs. Santos.

The Government had been asking for a written

(Testimony of Milton Cades.)

financial statement. Mr. Santos felt that there was such uncertainty as to what the value of the assets of his mother's estate was, what he would realize, that he was afraid to make any errors in the statement; and on the basis of that, he preferred not to sign a financial statement.

We discussed that, and the Government was satisfied to ask questions as to his financial status, in lieu of signing a financial statement.

Q. At this meeting on the 27th, was there any further discussion about the bonds of Mrs. Santos?

A. There was. At that time, we informed—present at that conference were Mr. Tonjes, Mr. Robinson, Mr. Alsup, Mr. Patterson and Mr. Chun, before Mr. Santos was sworn, we discussed the problem——

Q. Before he was sworn in?

A. Before he was sworn in and interrogated, the assurance which I had given Mrs. Santos was explained, that this money had to be used for her taxes; that if it were determined that she was not liable, it was to be refunded to her, and that was all satisfactory before——

Q. Before the interrogation started? [105]

A. Before the interrogation started.

Q. Do you recall whether in the interrogation itself there was any further discussion about the bonds?

A. During the interrogation, there were a number of questions which indicated prior knowledge in the questions. I recall a question by Mr. Robinson

(Testimony of Milton Cades.)

as to whether Mrs. Santos would agree, if there should be a refund,—whether she would agree to apply it on the taxes of Mr. Santos, and I explained that that was not in accordance with my understanding with her; I believe I said she would not agree to that, and so informed him.

Q. I have here Petitioner's Exhibit 2, which is the stenographic report of the sworn interrogation on that date. I will read this, and ask you if it is in accordance with your recollection.

“Mr. Robinson: In the event Mrs. Santos' taxes are paid in full and she can file a claim for refund, would she be willing to turn it over to us?”

“Mr. Cades: I understand she will not.

“Mr. Santos: I tried to work that.

“Mr. Cades: I understand that this business of dividing community property is something she has insisted on.

“Mr. Alsup: She has that right.

“Mr. Cades: She has that right, according to law. [106] She got hers out of that, and she was not going to let it go.

“Henry: Are you satisfied?”

Who was “Henry”?

A. Mr. Robinson.

Q. Is that in accordance with your recollection?

A. Yes, that is what I had reference to.

Q. Do you recall whether there was any discussion after this one? Stopped at 11:50 a.m.,—if there were any further discussions?

A. Well, very few of our conferences ever ad-

(Testimony of Milton Cades.)

journed when the formal talks ended. We usually talked various things over with the various persons present, and on a number of occasions I would walk down with different people, and I know Mr. Santos still did continue the conversation with regard to it.

Q. Do you recall any further conversations after that conference?

A. As I recall, this conference ended with a request to get the money in as quickly as we could, and get it paid up and settled.

Q. Then you subsequently did get the money in from Mrs. Santos?

A. We received a check from a San Francisco brokerage house on April the 2nd and we telephoned Mr. Alsup. I [107] telephoned Mr. Alsup that I had the check, and made an appointment for the next day to deliver the check. We turned the check into our trust account, and issued the firm check for the amount of the tax.

Q. And that was delivered on what date?

A. That was delivered on April 3rd at a conference at which Mr. Santos was present, Mr. Robinson, Mr. Alsup, Mr. Chun, Mr. Patterson and Mr. Tonjes.

Q. Was there any further discussion about this matter of the wife's property?

A. Well, at the time that this was done, I believe it was Mr. Patterson who undertook to have the lien released immediately and we did get a number of receipts. I believe Mr. Robinson took care of

(Testimony of Milton Cades.)

that, or had somebody make out the receipts for the payment.

Q. Was the lien subsequently released?

A. Either the same day or the next day. It was very closely thereafter.

Q. As to this transferee assessment of October, 1952, were you consulted with respect to that?

A. Before October of 1952, Mrs. Santos had written to me, saying that she had engaged other counsel in San Francisco, by the name of Rogers, and she asked me to withdraw as counsel.

My brother, J. Russell Cades, was also [108] entered as counsel, and my then partner, Irving Wild, was also entered as counsel. He had died a short time before, and I filed a withdrawal of counsel on behalf of myself and my brother, and filed a suggestion of death of Mr. Wild, and sent those to Mrs. Santos and Mr. Rogers.

Q. Mr. Rogers then represented Mrs. Santos?

A. That is right. Some time after that, I was consulted by Mr. Santos, who had received at his home the transferee liability—the transferee assessment against Mrs. Santos.

Q. The notice?

A. The notice of the transferee deficiency, and asked me about it, and I——

Q. Asked you what to do with it?

A. That's right, and I suggested that he send it to Mrs. Santos, because I was no longer authorized to act on her behalf.

(Testimony of Milton Cades.)

I did, however, call on Mr. Alsup, to tell him what a dirty trick I thought it was.

Mr. Maiden: If you Honor please, I object to that.

The Court: That part of the answer will be stricken.

Mr. Goodsill: I think that is all. [109]

Cross Examination

Q. (By Mr. Maiden): Mr. Cades, at the time you were having these conferences with the various representatives of the Collector's office, now the Director, in regard to the bonds which Mrs. Santos had, was there anything said about how Mrs. Santos got those bonds?

A. Yes, there was. It is my recollection, just in the short passage that Mr. Goodsill read, that they had been previously discussed. I refer to the section where I said Mrs. Santos had received the bonds and insisted on her right to them, and Mr. Alsup agreed to that.

Q. You said received the bonds. Did you make it clear that those bonds came from money which Mr. Santos had given Mrs. Santos?

A. Well, I don't just know what words were used, but I didn't have the slightest doubt that somewhere in the discussion the Government representatives knew exactly all about those bonds. I think there was a discussion that the bonds had been bought, and the account of Schwabacher & Frye showed they were purchased by them.

(Testimony of Milton Cades.)

Q. Now, Mr. Cades, at any time during any of these discussions, did any representative of the Government tell you that, if Mrs. Santos would turn over these bonds in settlement of her own tax liability, that she would not be held liable as transferee of Mr. Santos?

A. I don't think there was any question [110] at any time of the transferee liability discussed. However,——

Q. Just a moment, Mr. Cades. I have my answer, sir. A. May I explain the answer?

Q. If counsel desires you could do so, you may.

Mr. Goodsill: Your Honor, may he explain the answer?

The Court: Yes, he may explain it.

The Witness: My answer means that the word "transferee liability" was not used. However, our discussions indicated that there was full liability in any capacity, because,—if I may explain the reason for that—we were talking about the sources of the bonds, and it was quite apparent that we were both thinking about the same thing, although he did not mention it in particular words.

Q. (By Mr. Maiden): You were talking about her individual tax liability? A. Yes.

Q. Mr. Cades, as I understand it, we had a jeopardy assessment against Mr. Santos, at that time, didn't we, sir?

A. At that time, in April, no. In April there was—In April the 150-day letter had already been issued. The jeopardy, as I recall, was issued at the

(Testimony of Milton Cades.)

end of December, and the 150-day letter was sent out some time before the end of February; it would have to be, to be valid.

Q. Now, Mr. Cades, I am just wondering, [111] sir, if the Government knew that Mrs. Santos had these bonds and the Government, at that time, had these tax liabilities asserted against Mrs. Santos, would you please tell me how Mrs. Santos would have any bargaining power with the Government, with respect to turning over the bonds in satisfaction of her liability?

A. Well, let me put it this way:—

Q. Just one second, sir.

A. Are we arguing law or are we—

Q. No, we are not arguing the law. I am simply stating this:

How could Mrs. Santos withhold those bonds from the Government, in satisfaction of her own liability, if she was claiming ownership of the bonds?

A. Mrs. Santos was not in Honolulu and I did not have the benefit of advising her as to what her rights or liabilities were.

Q. But the argument with the Internal Revenue law in Hawaii doesn't—doesn't that extend over into California?

A. I think it does, yes, But physically—let me say this about that, that the Government had issued an order directing Mrs. Santos to produce all of her securities and turn them over to the Government. As far as I know that was not served on her in any proper manner that could bring her before the Director. [112]

(Testimony of Milton Cades.)

Q. The first you knew about the assertion of the transferee liability was when Mr. Rogers showed you the transferee notice in Mrs. Santos' case?

A. No, when Mr. Santos did.

Q. Oh, Mr. Santos advised you of the fact that Mrs. Santos had told him?

A. I don't recall how we received the information, but I believe he received it at his home, it was addressed to his Honolulu address.

Mr. Maiden: May I have just a second, if the Court please?

The Court: Yes.

Q. (By Mr. Maiden): Now, Mr. Cades, I will ask you sir, did you represent Mrs. Santos in her own individual case, which was docketed on this calendar? A. I did until sometime in 1952.

Q. I am talking about her own individual case.

A. That is what I was talking about too. I withdrew from that at the request of Mr. Rogers.

Q. I am asking you, sir, if you did not represent her at the time her individual tax case was called before this Court?

A. Yes, I did. I might explain that in February of 1954, this year, I was in San Francisco, at [113] which time Mrs. Santos had discontinued the services of Mr. Rogers, and had a Mr. Paul May representing her, and Mr. May asked me to turn over what material I had to him for the trial of the case. At that time,—

Q. Let's bring this to an end, sir. I appreciate your interest in the matter.

(Testimony of Milton Cades.)

I will ask you if it isn't a fact—didn't the Government make a stipulation with Mrs. Santos, in her individual case, ordering the over-payment to her of the amount which she had paid on her taxes.

A. Yes, but I was——

Q. Now, just a second. Now,——

A. Now listen——

Q. Now wait just a second. I asked that question——

The Court: Answer the question, Mr. Cades.

Mr. Maiden: He answered the question. That is it. That is all, your Honor please.

Redirect Examination

Q. (By Mr. Goodsill): Mr. Cades, with respect to this matter that was brought up and you were about to explain your answer——

A. Well, as a result of my discussion with Mr. May in San Francisco, in February, 1954, it was determined by Mr. May that Mrs. Santos' interest was exactly like Mr. Santos', in the determination of the amount of her tax liability; that it only resulted from her community interest [114-115] in his income, and at Mr. May's recommendation, Mrs. Santos asked me to complete the settlement with the Government of her tax liability in the same manner as I had done for Mr. Santos. It was a formal matter. The amounts were mathematical, and it just involved the signing of a stipulation.

Q. Mr. May recommended that to Mrs. Santos?

A. That is correct.

(Testimony of Milton Cades.)

Mr. Goodsill: I think that is all.

Mr. Tonjes: This might be a bit irregular, but will counsel permit me to interrogate the witness?

Mr. Goodsill: Very well.

Mr. Tonjes: This is a matter I happen to be familiar with.

Q. (By Mr. Tonjes): Mr. Cades, I show you a letter dated April 23, 1952, which was addressed to Mr. Lawrence Santos, and it is signed by J. M. Alsup, and has a notation of approval by Lawrence Santos, and I will ask you if you have seen that document before?

A. I am afraid I don't recall.

Q. You don't recall ever having seen it?

A. I do not, no.

Mr. Tonjes: I have no further questions.

The Court: No further questions? [116]

Mr. Goodsill: No further questions.

The Court: Very well, you may stand aside, Mr. Cades.

(Witness excused.)

Mr. Goodsill: I have no further witnesses.

The Court: Any testimony for the Respondent?

Mr. Tonjes: I would like to recall Mr. Santos very briefly, your Honor.

The Court: Very well, Mr. Santos is recalled.

LAWRENCE SANTOS

was recalled as a witness for and on behalf of the petitioner and, having been previously duly sworn was examined and testified further as follows:

(Testimony of Lawrence Santos.)

Recross Examination

Q. (By Mr. Tonjes): Mr. Santos, I show you a copy of a letter dated April 23, 1952, addressed to Mr. Lawrence Santos, 1051 Fourth Street, Honolulu, and signed by J. M. Alsup, and bearing a notation of approval by Lawrence Santos, and ask you if you have seen the original of that document?

A. It has my signature to it.

Q. I will ask you, Mr. Santos, if that letter contains the agreements which were reached pursuant to the many conferences which were had between, we will say between January 1, 1952 and the date of this letter? [117]

A. To a certain extent, yes, not the whole way.

Q. Not all the way? A. No.

Q. Why did you sign it if it didn't go all the way? A. Why did I sign it?

Q. Yes.

A. So that I could keep the store going.

Q. What was agreed to that is not in here?

A. The adjustments that came through later.

Q. No, you misunderstand me. What agreements were made between you and Government counsel, which are not contained in this writing, which you approved?

A. I would have to read it again.

Q. Take your time, and study it thoroughly.

A. What is your question?

Q. As I understand it, you just stated that this letter did not contain all of the agreements which were entered into as a result of numerous confer-

(Testimony of Lawrence Santos.)

ences had between January 1, 1952, and the date of that letter.

A. That is right, and a lot of these things were never done.

Q. Never mind whether they were done, or not. Did you agree to anything else?

A. Did I agree to do anything else, except what is written in here? [118]

Q. Did you and the Government reach any other agreements, in addition to those that are embodied in that letter?

A. Yes, we reached an agreement about my wife's taxes, and that is not embodied in here.

Q. Who did you reach that agreement with?

A. With yourself, and with Mr. Robinson and with Mr. Alsup.

Q. Why did you sign this when you tell me it is incomplete? A. Why did I sign that?

Q. Yes.

A. Because this had more to do with my interrogation than anything else. That is what that was about.

Q. This had nothing to do with any interrogation——

A. That is dated as of March 27, and that is the date I was being interrogated.

Q. This is dated April 23.

A. With reference to March 27.

Q. And is this not the result of all of the several conferences that we had?

A. This is the result of what it says over there,

(Testimony of Lawrence Santos.)

Mr. Tonjes. Let me look at it once more. "Reference is made to our conference of March 27, 1952."

Q. That was the last one before that date, wasn't it— [119] the last lengthy conference any way?

A. I wouldn't say that. I would say we must have had some other conferences after that.

Q. Do you have any other agreements in writing which provide for any other matters which are not embodied in this letter?

A. Previous to that?

Q. Any time at all.

A. We had two or three agreements with the Government, they were eliminated.

Q. (By The Court): Were they in writing? That is the question.

A. They were in writing, yes.

Q. (By Mr. Tonjes): They are in writing?

A. Yes, that is right.

Q. Where are copies of them?

A. Most of the copies—the copies I would sign were turned back to you folks. Just like the interrogations—we had more than one interrogation of me and we don't produce any more interrogations. You interrogated me more than once.

Q. Yes.

A. Where are the copies? I swore to them.

Q. I don't know. Why didn't you ask for them if you [120] wanted them. I don't give them out. My point is this, Mr. Santos, that I naturally assumed that when people sit down across the table

(Testimony of Lawrence Santos.)

and negotiate they put everything they want to agree to in writing; isn't that correct?

Mr. Goodsill: I object to that line of argument, your Honor.

The Court: Well, it is cross examination. Let's let him finish with the questions.

Q. (By Mr. Tonjes): Or is it?

A. Sometimes you don't get it in writing.

Q. I want to ask you, Mr. Santos, whether we didn't have several conversations and didn't we have several instruments in writing?

A. Instruments in regard to the sale of the store, and everything that you wanted to sign were the instruments that I would sign.

Q. That's right. A. Yes, sir.

Q. And anything you wanted in there you got in there, didn't you? A. Not always, no.

Q. No, not always. We had our rights to protect, and we protected them, and you agreed to that.

A. It was all to do with the March 27th conference, [121] and that is all that you asked me.

Q. Do you have anything else in writing, in addition to this document? A. Do I have any?

Q. Yes. A. No, I don't.

Mr. Tonjes: The Respondent offers in evidence the letter identified by Lawrence Santos.

The Court: The witness has identified it as a correct copy of the original, has he not?

Mr. Tonjes: With his signature on it, yes, your Honor.

The Court: Is there any objection to it?

(Testimony of Lawrence Santos.)

Mr. Goodsill: No, your Honor.

The Court: There being no objection, the Respondent's Exhibit R is received in evidence.

(Respondent's Exhibit R was thereupon received in evidence.)

Q. (By Mr. Tonjes): Did you show that letter to your lawyer? A. No, I did not.

Q. You say you did not show it to your counsel?

A. That is correct. In fact, I don't even have a copy of it.

Q. You don't have a copy of that letter? [122]

A. That is correct.

Q. What did you do with the copy you got?

A. I don't think I got a copy.

Q. Yes, you got a copy.

A. It is my recollection that I didn't.

Mr. Goodsill: He says he had not got a copy.

Mr. Tonjes: I say he got one, so that is all right, too.

Mr. Goodsill: Yes, Mr. Tonjes, but that is not evidence.

Mr. Tonjes: Your Honor please, at this time the Respondent moves to strike all of the testimony concerning these various meetings and agreements, whereby the petitioner contends that this matter of asserting the transferee liability may not be further pursued by the Government on the grounds of estoppel.

The Court: Well, at this time, the motion will be denied. You can cover it in your briefs, and I

will take care of it when I write up the case. The motion is denied.

Mr. Tonjes: That is all.

(Witness excused.)

The Court: Does the petitioner rest?

Mr. Goodsill: The petitioner rests.

The Court: Does the Government rest? [123]

Mr. Tonjes: The Government rests.

The Court: Gentlemen, how much time do you think you will need for filing your briefs?

Mr. Goodsill: After we get the record, I should think forty-five days will be ample.

The Court: It will be some little time before you get the transcript.

How about sixty days for the filing of your original brief? Do you desire to file simultaneous or concurrent briefs?

Mr. Maiden: I presume, perhaps, inasmuch as we have the burden of proof, perhaps we should file the opening brief, and Mr. Goodsill file a reply brief. I believe that would perhaps be best. I should like sixty days, if the Court please.

The Court: Very well, the Respondent will be given sixty days in which to file his original brief, and the petitioner will be given forty-five days thereafter for the filing of reply brief, or answering brief.

How much time for your reply brief?

Mr. Maiden: Thirty days. Mr. Goodsill and I will exchange briefs as we send them in.

Mr. Goodsill: Yes.

The Court: Now, let's get the exact dates. That

[124] will be sixty—sixty, forty-five and thirty days, Mr. Clerk.

The Clerk: The Respondent will file his opening brief on September 23, the petitioner's reply brief on November 8, the Respondent's reply brief on December 8, 1954.

The Court: If there is nothing further in connection with this case, that concludes the hearings so far on this calendar, and we will be adjourned.

(Thereupon, at 3:15 o'clock p.m., the hearing in the above-entitled petition was closed.)

[Endorsed]: T. C. U. S. Filed Aug. 30, 1954.

PETITIONER'S EXHIBIT No. 2

STATEMENT OF MR. LAWRENCE SANTOS

1051 Fort Street, Honolulu, T. H., taken in the office of the Collector of Internal Revenue, Honolulu, T. H., at 9:50 A.M., March 27, 1952.

Present were: Mr. J. M. Alsup, Collector; Mr. Henry Robinson, Assistant Collector; Mr. E. A. Tonjes, Special Assistant to the Chief Counsel; Mr. Calvin J. H. Chun, Chief Field Deputy; Mr. Howard A. Patterson, Deputy Collector, and Mr. Lawrence Santos, Mr. Milton Cades.

Recording Secretary: Alma T. Chung.

Mr. Patterson: Will you please stand and raise your right hand? Do you, Lawrence Santos, solemnly swear that the statements to be made at this time with respect to your present financial condition

Petitioner's Exhibit No. 2—(Continued)

are true and correct and that you have no assets, either directly or indirectly owned, of any nature other than those now being revealed?

Mr. Santos: I do.

Mr. Tonjes: (To Mr. Chun) What are the years involved in this?

Mr. Patterson: '43, '44, '45—

Mr. Tonjes: '43 is the earliest year. What's the latest year?

Mr. Patterson: '47.

Questions by Mr. Tonjes:

Q. As I understand it, you are in the shoe business and you are a stockholder in the Manufacturer Shoe Company. Is that right? A. That's right.

Q. Do you know how many shares of stock you own in that organization? A. 15,750 shares.

Q. They are in your name? A. Yes.

Q. Does any other person hold any stock in the Manufacturer Shoe Company for your benefit?

A. No—you mean do I have any other stock in anybody else's name—no.

Q. Did you ever give away any stock of the Manufacturer Shoe Company?

A. Well, my children. If that's what you mean. I gave my children stocks in the Manufacturer Shoe Company.

Q. Did you transfer or dispose of any stock to some other person, in the open market or elsewhere? Did you receive less than a full or adequate consideration for it?

A. To the best of my knowledge I haven't.

Petitioner's Exhibit No. 2—(Continued)

Q. Did you give any other person any stock for which you did not receive full or adequate consideration?

A. Other than my children, no. I gave them money and they bought stocks.

Mr. Cades: They didn't buy the stocks.

A. No, they didn't buy the stocks. The Trust bought the stocks. The Company was a partnership. The Trust got its share.

Q. When was the Manufacturer Shoe Company organized?

A. To the best of my knowledge, 1947. You are talking about the corporation? Yes, 1947. Prior to that time I had been in a partnership.

Q. Who were the partners?

A. My son and daughter. Hawaiian Trust Company as trustee.

Q. When was the partnership organized?

A. To the best of my knowledge it was in '45.

Q. In 1945? A. Yes.

Q. You were a member of the partnership when it was first formed? A. Yes.

Q. Who else was in the partnership?

A. Hawaiian Trust Company as trustee for June and Bruce Santos, and Lawrence Santos.

Q. When did you first go into business?

A. I went into the business in 1942.

Q. You organized the business?

Mr. Alsup: Lawrence bought the business out, I think.

A. Yes, that's right, Jim. I operated then as

Petitioner's Exhibit No. 2—(Continued)

Lawrence Santos, doing business as Manufacturer Shoe Store.

Q. You were the sole proprietor of that business?

A. In 1942? Yes.

Q. That's down on Fort Street?

A. Yes, that's right.

Q. That's the business now carried on by the company? A. Yes.

Q. What was the first change that took place in that business?

A. I am not positive, but to the best of my knowledge, it was in 1945.

Q. What happened then? In other words, you were still the sole proprietor in 1945?

A. Part of 1945.

Q. Sole proprietor? A. Yes.

Q. All right. What happened in 1945?

A. I formed a partnership then. Hawaiian Trust Company as trustee for June and Bruce Santos, and myself.

Q. No other partners? A. No.

Q. What were the respective partnership interests? In other words, how much did you own and how much did the children own?

A. I own 60% and the children own 40%.

Q. Do you know where the Hawaiian Trust Company got the money to put into the business?

A. Yes.

Q. Where did it come from?

A. I made a gift to the children. I don't know how to put it.

Petitioner's Exhibit No. 2—(Continued)

Mr. Chun: How much did you pay?

A. I don't know. I paid a certain amount of money to the Hawaiian Trust Company. They have it in the record. I don't know how much it was. It was 40%.

Q. There was no consideration for that transfer?

A. There was a consideration.

Q. What was the consideration? How much did you give the children? You don't recall what the amount was?

A. Either sixty or seventy thousand.

Q. Seventy thousand, you say? Where did you get that money?

A. Where did I get it? From the money I made from the business.

Q. Profits from the Manufacturer Shoe Company? A. Yes.

Q. Did you have any other business interests about that time? A. No.

Q. Sixty thousand dollars—did you have any money left? A. Yes.

Q. How much? A. I don't know.

Q. Can you find out?

A. I don't know. I can try.

Q. Don't you have any records?

A. I have no records as an individual.

Q. You mean you don't know how much you made and how much you had left over?

A. No.

Q. The law requires you to do it. You made a gift of approximately seventy thousand dollars to

Petitioner's Exhibit No. 2—(Continued)

your children and the gift was in the form of a transfer of funds to the Hawaiian Trust Company as trustee for the children? A. Yes.

Q. Then the Hawaiian Trust Company did what with that money? Did they buy stock in the Manufacturer Shoe Company?

A. Yes, they bought stock to organize the partnership at about that time. The corporation was not organized until later. Then the business operated as a partnership for a while.

Q. Do you know how much you made as a partner? A. No, but I can find out.

Q. How long were you in the partnership?

A. Until 1947.

Q. What happened in '47?

A. Then we incorporated.

Q. How much did you get in shares or percentage?

A. I got fifteen thousand—no—I got fifteen thousand—I believe I got 15,750 shares. The children got the balance.

Q. How much was that?

A. They got 40%. Let's see—40% of 35—they got 14,000 shares.

Q. That's for the two children together?

A. Yes.

Q. Did your wife get any stock?

A. Yes, she got 5,250 shares.

Q. What did she pay for that?

A. It was part of her income from the community property.

Petitioner's Exhibit No. 2—(Continued)

Q. Did she pay anything for it?

A. \$52,500.

Q. I don't follow that. She was issued stock. Is that right? How did she get an interest in the partnership? You first started the business as an individual, then you carried it as a partnership with your two children with the Hawaiian Trust Company as trustee. Is that correct?

A. That's right.

Q. Later the corporation was organized and stock was issued. Why did your wife get it?

A. From the money she got from the community property. From the money for her share of the community property.

Mr. Cades: Would you like me to explain? At that time Cameron & Johnston determined Mrs. Santos' interest in the Manufacturer Shoe Company. Community property came into being on June 1, 1945. The transfer of these assets had to be made legally. A measurement was made by Cameron and Johnston. A division of the property took place at that time and the value of her interest was the number of shares she got, referring to her interest in the old partnership. Is that correct?

Mr. Santos: Yes.

Q. Cameron and Johnston figured out the distribution of that interest?

Mr. Cades: Under Hawaiian law does the income earned by the husband become community property?

Mr. Chun: Yes, it does.

Petitioner's Exhibit No. 2—(Continued)

Mr. Tonjes: How about income earned from separate property?

Mr. Cades: In that respect, Hawaii is like Texas, not like California. It is community property, whether it's from separate income, or spendthrift trust.

Mr. Tonjes: Well, going back to the item we were discussing—do you own any other stocks in any other corporation in your name or anyone else's name?

A. Is that the list I turned over to Mr. Alsup?

Mr. Patterson: Yes. That's your receipt.

Mr. Tonjes: Do you own other stocks in other corporations?

A. Yes, I have 25 shares in Pacific Gas.

Q. What other stocks do you own, besides the one you mentioned in the Manufacturer Shoe Store?

A. Williams Mortuary.

Q. How many shares? A. Thirteen shares.

Q. What other stocks do you own?

A. 200 shares of Pacific Refinery—no that's supposed to be—oh, yes, here it is—400 shares of Pacific Refinery; 1 share Consolidated Amusement; 13 shares of Williams Mortuary; 100 shares of Honolulu Gas; 250 shares of Pacific Gas and Electric. I believe that's about all.

Q. That's all the stock you now own? Are they in your name? A. Yes.

Mr. Cades: Some of them are in the name of Schwartz, aren't they?

A. Oh, yes, some are in the name of Schwartz.

Petitioner's Exhibit No. 2—(Continued)

Q. Do you have any bonds or other evidence of indebtedness? A. Of indebtedness?

Q. Yes, does anyone owe you any money? You understand the difference between stocks and bonds? Do you own any government bonds?

A. Yes, my wife's bonds.

Q. Your wife's? Did you give them to your wife?

A. I don't know how to answer that question.

Q. What is the name of these bonds?

A. Government bonds.

Q. How much are they worth? What is the face value of it?

A. About seventy thousand dollars.

Q. Where are they now?

A. My wife has them, and she is selling them.

Q. How did you wife get them? Why did you give them to her?

A. It was sort of a distribution between the two of us.

Q. Are those all the bonds that you had?

A. I had more, but I sold them.

Q. You gave your wife about seventy thousand dollars worth? When did you deliver them to her?

A. That I can't answer.

Q. Was it this year?

A. No, before this year.

Q. Was it last year?

A. Over a period of time. Not this year. Nothing this year.

Q. Then it was several times that you gave her

Petitioner's Exhibit No. 2—(Continued)

those bonds. Do you have any record of how much you gave her?

A. I believe it was seventy thousand dollars.

Q. You say you gave it to her all at once. Could you say approximately when you gave her these bonds? A. No, I honestly couldn't.

Q. Do you know when the first transfer was made to her?

A. Quite a few years. I don't know how many years.

Q. When did you first start buying government bonds?

A. I could check that and give you an accurate answer.

Q. If you care to do that we would appreciate it. Did you give any bonds to any other person?

A. No.

Q. To hold for your benefit? A. No.

Q. Do you have any other person now holding any stock for your benefit? A. No.

Q. Did you either give or have transferred to any other person any stocks which were to be held for your benefit?

A. I didn't give any stock to anybody.

Q. You never gave any stock to anybody?

A. No.

Q. Except for full consideration? A. Yes.

Q. Do you know a person named Rose Sills?

A. Yes, very well.

Q. Is she an employee of the Manufacturer Shoe Company? A. Yes.

Petitioner's Exhibit No. 2—(Continued)

Q. Did you ever give her any money or stock to be held by her for you? A. No.

Q. At no time? I mean 1943 to the present time.

A. Yes, for a while I had an account under the name of Rose Sills but the stocks and bonds that she had were sold. It wasn't her account—it was mine. No stocks or bonds belonged to her. They belonged to me.

Q. Do you have any brokerage accounts now under your own name?

A. You mean do I have something in there? No. I haven't any account at all. I haven't gone near a brokerage house for a year, if that's what you mean.

Q. How many bank accounts do you have?

A. I don't have any bank accounts.

Q. No bank accounts at all? Both in Honolulu and on the mainland?

A. I take that back. I had an account at the Wells Fargo Bank. In San Francisco. I still have an open account. There's some forty odd dollars there.

Q. You have any other accounts? A. No.

Q. Do you have any other business interests? In any company? A. No.

Q. Power Company?

A. No, not even in Mexico City. I mention Mexico City because I was accused of having money down in Mexico City.

Q. Do you have any persons owing you any money on open account? A. Yes.

Petitioner's Exhibit No. 2—(Continued)

Q. How much? Are they over \$500?

A. No.

Q. No person owes you any more than \$500?

A. That's correct.

Questions by Mr. Chun:

Q. Does the Manufacturer Shoe Company owe you anything outside of the shares of stock and accrued salary?

A. No, they don't. I owe the Manufacturer Shoe Company.

Q. Is the corporation holding anything for you, either in the safe or vault? A. No.

Q. How much do you owe the corporation?

A. \$105 or \$110.

Q. How was that incurred?

A. Mostly on payments from year to year in taxes.

Q. When was the first time it was incurred to the corporation?

A. You'll find it on the back of the note. I gave you a copy of the note. Remember, Henry, I gave you a copy of the note.

Mr. Robinson: I don't recall.

A. It was attached to the stock certificates.

Mr. Robinson: Oh, I didn't notice. They're in the Cashier's vault.

Questions by Mr. Tonjes:

Q. Do you have any safety deposit boxes at all?

A. Yes.

Q. Where is it?

A. Hawaiian Trust Company.

Petitioner's Exhibit No. 2—(Continued)

Q. Do you have any other box besides that?

A. No.

Q. Anyone renting a box in his name for you?

A. No.

Q. You don't have access to anyone else's box?

A. That's right.

Q. Do you have an automobile? A. No.

Q. Don't you own an automobile?

A. The corporation owns that.

Q. Real estate?

A. No, I don't. I don't know how to explain that.

Q. Leasehold, you mean?

A. Yes, I rent from Lowell Dillingham.

Q. You rent a house? A. That's right.

Q. Furnished or unfurnished?

A. Unfurnished—no, I mean furnished.

Q. How much is your furniture worth?

A. Couple of thousand.

Q. Four thousand?

A. I would say about three thousand. I haven't bought anything in years.

Q. Do you own any diamonds or jewelry?

A. I have a diamond ring.

Q. How much is it worth?

A. Paid around \$450 for it.

Q. No other jewelry of substantial value?

A. I got a watch.

Q. Nothing over \$500? A. No.

Q. Do you own any leaseholds?

A. No. I had one but I don't have it anymore.

Petitioner's Exhibit No. 2—(Continued)

Q. Have you any life insurance? A. No.

Q. No life insurance?

A. That is correct. I have no life insurance policy—not payable to me.

Q. Are they contract premium or life that you know? How many and what is the face value?

A. This is just what I am guessing at. \$225,000 for two term life insurances with Prudential.

Q. Who is the beneficiary?

A. I think it's my children. I can check that.

Q. Who pays the premium on that?

A. The children—no, it's my wife.

Q. Where does she get that money?

A. From her income.

Q. Where does she get her income from?

A. From this community property.

Q. What source of income has she today?

A. She has dividends in the Manufacturers Shoe Company. And the household money. Women usually pinch that.

Q. Are those the only life insurance policies you have?

A. I have U. S. Life. \$44,000—I am not sure.

Mr. Chun: What else is there?

A. I have to check. They are not in my possession. They are in hers.

Mr. Chun: What about Von Hamn Young?

A. Oh, yes, I have one with Manufacturer's Life.

Mr. Tonjes: Do you have anything else of any character being held for you for your benefit?

A. What do you mean by character?

Petitioner's Exhibit No. 2—(Continued)

Q. Anything of value. A. No.

Q. Nothing of value?

A. There's my mother's estate. I am sole beneficiary. I have interests in my mother's estate.

Q. In addition to that, do you have anything else of value, Mr. Santos? Do you have anything in someone else's name that might be of some value?

A. I don't have anything else. I don't have anything else in any other company.

Q. Do you have anything else on the face of the earth?

A. I don't know how to answer that question right now.

Q. Do you understand the question? What part don't you understand? Tell us and we can discuss it.

A. I want to give you an answer, but I want to give you a correct answer on that. That's why I am holding up from answering it.

Q. I just want you to appreciate the significance of the case. The whole topic of our discussion has been leading up to that.

Mr. Chun: No property?

A. No property. Well, I'll explain it then. Then you can discuss it. I have an agreement with Lou Haiman in which I have advanced to him money and I am supposed to get a share in Lou Haiman, Incorporated. The amount of the money invested in there is \$40,000. I don't know what you call it—stock, investment, an agreement or money or what the thing is.

Petitioner's Exhibit No. 2—(Continued)

Q. Who is Mr. Haiman?

A. De Liso Deb man.

Q. How do you spell his name?

A. H-a-i-m-a-n.

Q. And Lou?

A. Louis, I guess. I guess Lou is for Louis. I call him Lou. I want to get this agreement and turn it over to you.

Q. When was the money advanced?

A. Not better than a year ago.

Q. What is his address?

A. I don't know. I'll get it for you. It's in St. Louis, Missouri. I will get the agreement and turn it over to you. If it's stock, I will turn it over to you. He lives in Los Angeles. The stock will be turned over to you.

Q. Do you have any other property or property rights?

A. To the best of my knowledge, no.

Q. Does the partnership still owe you anything?

A. No.

Q. Hold anything for you? A. No.

Q. Does the partnership have any assets now? As a partnership?

A. No. The assets go ahead into the corporation.

Q. You had some real estate at Halelea Place?

A. I sold that property through Howdy Reynolds. They sold it to somebody.

Q. I understand it is now owned by William T. and Ethel S. Bolger. Are they related to you?

Petitioner's Exhibit No. 2—(Continued)

A. To me? I don't think so.

Q. Is William T. Bolger related to you?

A. No.

Q. Is Ethel S. Bolger related to you?

A. I don't know either one of the two. We are not related. I don't even know who they are.

Q. How much did you get for the place?

A. I got \$20,000 net or \$20,000 gross.

Q. Have you any mortgages receivable now?

A. Just that agreement we were talking about.

Q. Did you lend any money out? A. No.

Q. Does the City Finance and Mortgage Company owe you anything?

A. No. To the best of my knowledge they don't owe me a dime.

Q. There was a transfer of your old Diamond Head home to the corporation. Was there any consideration for that transfer?

A. I didn't own any property in Diamond Head. The corporation did.

Q. Was it in your name?

A. I don't believe it ever was. It was paid for by the corporation. When it was sold the money went into the corporation. Does that answer it? I got no money out of it.

Q. Did you put any money into that home?

A. Did I?

Q. Yes. A. No.

Q. It was purchased with corporation funds?

A. I believe it was purchased with partnership funds. It went as an asset to the corporation.

Petitioner's Exhibit No. 2—(Continued)

Same as I did when I bought the Manoa property.

Q. How about the Cadillac?

A. What about the Cadillac?

Q. Did you first buy that yourself?

A. The Cadillac is now in the corporation name. Anything in the name of the corporation was bought by the corporation.

Q. Was it ever in your name?

A. To the best of my knowledge it never was. Check it through the registration.

Q. I believe the records show the Cadillac was in your name and transferred to the corporation.

A. I will have it verified. I don't think it's correct.

Q. It shows that it was transferred from you to the corporation.

A. It was bought directly from Schuman's for \$3,000 then it was turned over to the corporation. That could be possible—that I don't know. As far as I know, it was in the corporation's name. I don't know. It's a corporation thing.

Q. Did you at any time have any assets in Sacramento, California?

A. This fellow lives in Sacramento. He lives with neighbors around that retail shoe store.

Q. Did you have any assets in Sacramento?

A. It is that agreement in Sacramento.

Q. Outside of whatever Haiman owes you, do you now have anything in Sacramento?

A. I haven't anything—nothing.

Q. How many stores does Haiman own?

Petitioner's Exhibit No. 2—(Continued)

A. One.

Q. Outside of that consideration, did you ever have any interest in Bon Marche?

A. That's the one we are talking about. We don't have any interest in Bon Marche. That's a big store. Haiman deals with Bon Marche.

Questions by Mr. Robinson:

Q. What assets do you have in the safety deposit box in the Hawaiian Trust Company?

A. Didn't you search that? I made you go up there.

Q. No, we didn't go. Will you stand the expense of opening the box? A. No, sir.

Q. You offered to pay for the expense.

A. Yes, sure, I'll pay it.

Question by Mr. Tonjes:

Q. One more thing I wanted to ask. Have you kept your determination of profit and loss for the past year in the store? Have you a profit and loss statement?

A. No. February 28 is the end of the year for us. They haven't finished working on it yet.

Q. Could you send us a copy of your profit and loss statement when it is completed?

A. Sure, I'll do that for you.

Mr. Alsup: You still want his financial statement?

Mr. Tonjes: I think this takes the place of it. It might be to your advantage, though, to submit a statement to us. There might be some future occasion when we might want it.

Petitioner's Exhibit No. 2—(Continued)

Mr. Alsup: Let's get down to a point. Make a deal with him. How much out of this you got at the present time?

Mr. Chun: How much he got? In shares you mean? 15,750 shares.

Mr. Alsup: No, no—how much money?

Mr. Chun: \$157,500 par value in Manufacturers Shoe Store.

Mr. Alsup: What other stocks has he got?

Mr. Chun: Pacific Gas—\$12,500.

Mr. Alsup: Then we're going to get how much out of this fifty or sixty thousand he is getting?

Mr. Santos: Around \$65,000. Then there's all the stocks from my mother's estate. That comes to around \$60,000.

Mr. Alsup: Now, let's see, that comes to around \$295,000. Now, Lawrence, what you make over your salary in the store you will turn over to us?

Mr. Santos: Yes, sir, and also the bonus and 25% of the profit will be bonus. That will be turned over to you.

Mr. Alsup: Let's bring this thing to a close one way or another. You know what you got and what Manufacturer Shoe Store got. Let him draw up an agreement.

Mr. Santos: I want you folks to draw it up.

Mr. Tonjes: I don't think an agreement is necessary if he meets the payments as indicated—the \$70,000 from his wife and his other funds.

Mr. Chun: Well, the \$150,000 will liquidate his

Petitioner's Exhibit No. 2—(Continued)
wife's account. We could dispose of some of his stocks other than Manufacturers Shoe Store.

Mr. Alsup: Your whole idea is to stay in business, isn't it?

Mr. Santos: Yes, but I'd like to keep my interest in this Lou Haiman deal.

Mr. Chun: Is there any income coming out of that?

Mr. Santos: No, it's just an agreement.

Mr. Alsup: Are you gentlemen agreeable? Mr. Robinson?

Mr. Robinson: What assurance do we have that you will have the \$150,000?

Mr. Cades: The check in payment of the bonds is going to come direct to me. I will immediately transmit it to you. (To Mr. Santos.) The \$60,000 of the estate you will immediately write to your attorney and find out what has to be done. I don't see any point in making any further agreements. The agreement which he made outlines our position.

Mr. Santos: Can't I get something in writing?

Mr. Tonjes: We could acknowledge receipt of the stocks.

Mr. Cades: Say that he has made arrangements for the turning over to you what property, including the Manufacturer Shoe stock property, he has, and that the stock will not be sold as long as he continues to comply with the arrangements set forth.

Mr. Alsup: Just say we have made satisfactory

Petitioner's Exhibit No. 2—(Continued)

arrangements with him to take care of his back taxes.

Mr. Santos: That's what I mean. In other words, we have made arrangements for the payment of my tax.

Mr. Tonjes: I wouldn't say that, Mr. Santos. We don't know how much your tax is. We have reached a position where I think we might be justified in not selling the stock.

Mr. Santos: Don't say might—please.

Mr. Cades: Assuming that everything is correct—then the understanding is that you will not sell the stock and he will be allowed to run the store with all payments above the salary to be paid to you?

Mr. Tonjes: That's about the size of it. There's one thing I might add—if this estate in California drags on without a complete settlement over what might be a reasonable time, we would have a legal squawk coming.

Mr. Santos: Yes, then the procedure would be legal.

Mr. Cades: (To Mr. Santos) Can you write to your attorney? We want to get the estate settled. If he does require your staying in California for an extended period, does he recommend your resignation and have some other executor.

Mr. Alsup: Henry, are you satisfied with this agreement?

Mr. Robinson: Will he give us his financial statement?

Petitioner's Exhibit No. 2—(Continued)

Mr. Alsup: I mean are you satisfied with this?

Mr. Robinson: Yes.

Mr. Alsup: Mr. Chun?

Mr. Chun: Are you going to give us a copy of this agreement with Mr. Haiman? Are you going to have that liquidated?

Mr. Santos: If possible, I'd like to keep that stock going. That's the only two stocks I'd like to keep—Lou Haiman and Manufacturer Shoe Store.

Mr. Alsup: He's going to turn it over to us and let us look it over.

Mr. Santos: Lou is a representative of the De Liso Deb line. We do a lot of business with them. McInerney is the only other store handling the De Liso Deb line and we are about to get it along with them.

Mr. Chun: Would Lou Haiman buy the stock back?

Mr. Santos: He probably would, but he wouldn't pay \$40,000 for it. He would only buy it for about \$10,000.

Mr. Cades: You can't get \$40,000 for it.

Mr. Alsup: I just want to close this thing up. We should reach an agreement so we can quit running after him.

Mr. Chun: Try to get the store to buy that.

Mr. Santos: That's up to you folks.

Mr. Chun: We can go ahead now and sell it.

Mr. Santos: If you want to sell it, it will just kill the thing.

Mr. Tonjes: We have to see what happens.

Petitioner's Exhibit No. 2—(Continued)

Mr. Santos: Someday that thing will pay for itself. You have to take a loss if you sell it now.

Mr. Chun: Try to get him to buy it back. Or get the store to buy it. The store would be more interested than you are.

Mr. Cades: You got no objections to selling it back to him?

Mr. Santos: All he has in there is \$10,000. He has the controlling interest. All they can get is dividends. That \$40,000 is going well.

Mr. Chun: Can't you work on the directors to buy that?

Mr. Santos: I can try, but if you know Mr. White—how much you want? I don't think you'll get very much.

Mr. Alsup: Are you satisfied to go along with this deal?

Mr. Tonjes: I don't think we want to commit ourselves.

Mr. Santos: When we are through with this tax court we will come back and discuss what's going to happen to the store. We can check back here and make a new deal. Allow me to run the store with the condition that I be able to run it as a proper manager.

Mr. Alsup: Are you satisfied with this, Henry?

Mr. Robinson: Yes.

Mr. Alsup: Mr. Chun?

Mr. Chun: Can the store give us copies of whatever statements you make? Do you make them

Petitioner's Exhibit No. 2—(Continued)
monthly, quarterly, or yearly? That's what we want.

Mr. Santos: How do you want them made? We'll make them the way you want them.

Mr. Chun: Just give us copies whenever you make them.

Mr. Santos: All right. If I don't live up to my part of the agreement you can take whatever action is necessary.

Mr. Robinson: In the event Mrs. Santos' taxes are paid in full and you can file claim for refund, will she be willing to turn it over to us?

Mr. Cades: I understand she will not.

Mr. Santos: I tried to work that.

Mr. Cades: I understand that this business of dividing community property is something she insisted on.

Mr. Alsup: She has that right.

Mr. Cades: She has that right according to law. She got hers out of that. She was not going to let it go.

Mr. Alsup: Henry, are you satisfied?

Mr. Robinson: Yes.

Mr. Alsup: Mr. Chun?

Mr. Chun: Could we have a limitation to that agreement. Make it about three or four months. Or make it run no more than four years.

Mr. Santos: You can do that if you want to. All right, make it.

Mr. Robinson: The limitation is 6 years on collections.

Petitioner's Exhibit No. 2—(Continued)

Mr. Santos: This is just the beginning, isn't it?

Mr. Patterson: That salary that you are going to draw. Is that for ordinary living expenses?

Mr. Santos: Yes. \$2,000 and no more.

Mr. Tonjes: We have a general understanding of what we want to do and that understanding is that he is to draw a salary of \$2,000.

Mr. Patterson: That \$2,000 will include your living expenses and current taxes. Anything over that will be turned over to us?

Mr. Santos: Yes.

Mr. Alsup: Mr. Tonjes, as legal advisor, are you satisfied?

Mr. Chun: On that \$2,000—you are not going to draw anything more than \$2,000 out of the corporation?

Mr. Cades: He will live on \$2,000 a month less the withholding.

Mr. Chun: How about that 25% bonus. Can't you eliminate that?

Mr. Tonjes: Do you have to pay yourself that bonus?

Mr. Santos: According to this Wage Stabilization thing.

Mr. Tonjes: Maybe it would be better to leave that money in the corporation.

Mr. Cades: If he suspends that thing, he can't ever get it back again.

Mr. Santos: It would come out of the corporation anyway.

Mr. Cades: It wouldn't increase the corpora-

Petitioner's Exhibit No. 2—(Continued)
tion's worth because they have to pay the tax any-
way. He is entitled to that bonus.

Statement completed at 11:50 a.m.

I have carefully read the foregoing transcript of
my statement, pages 1 to 27, and I hereby certify
that, to the best of my knowledge and belief, it is
a true and correct transcript of my answers to the
questions therein propounded.

.....
Lawrence Santos

Admitted in Evidence July 23, 1954.

[Endorsed]: No. 15371. United States Court of
Appeals for the Ninth Circuit. Irmgard Santos,
Petitioner, vs. Commissioner of Internal Revenue,
Respondent. Transcript of the Record. Petition to
Review a Decision of The Tax Court of the United
States.

Filed: November 19, 1956.

Docketed: November 28, 1956.

/s/ PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
for the Ninth Circuit

No. 15371

Tax Court Docket No. 46327

IRMGARD SANTOS,

Petitioner on Review,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent on Review.

STATEMENT OF POINTS

The points on which petitioner intends to rely on this appeal from the opinion and final order and decision entered by the Tax Court of the United States are:

1. The Tax Court erred in determining that petitioner Irmgard Santos was a transferee of the assets of Lawrence Santos in the amount of \$68,287.90.

2. The Tax Court erred in determining that petitioner is liable as transferee of the assets of Lawrence Santos in the amount of \$68,287.90 because there was no transfer of assets of Lawrence Santos to petitioner.

3. The Tax Court erred in failing to hold that the assets and money involved were the separate property of the petitioner and were used by petitioner to pay her separate Federal income taxes.

4. The Tax Court erred in holding that petitioner, Irmgard Santos, received a gratuitous transfer of property of the transferor, Lawrence Santos, while insolvent, of the value of \$68,287.90, and is liable as transferee to that extent.

5. The Tax Court erred in determining that the respondent had met the burden of proof to show transferee liability.

6. The Tax Court erred in determining petitioner was liable as a transferee when she merely received her share of community funds and used those funds to pay her own taxes on her share of community income.

7. The Tax Court erred in failing to hold that the respondent on review is estopped from proceeding against petitioner as transferee because of respondent's agreement to apply the proceeds of the assets alleged to have been transferred solely against petitioner's individual income tax liability.

8. The Tax Court's opinion and decision are not supported by the evidence.

9. The Tax Court's opinion and decision are contrary to law.

November 29, 1956.

Respectfully submitted,

/s/ ROBERT ASH

Attorney for Petitioner on Review.

Service of Copy Acknowledged.

[Endorsed]: Filed Nov. 30, 1956. Paul P. O'Brien, Clerk.